

**REQUEST FOR PROPOSALS FOR PROFESSIONAL SERVICES
WATERSHED APPROACH TO TOXICS ASSESSMENT AND RESTORATION
ISSUED BY DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL
CONTROL
CONTRACT NUMBER NAT14190-WATAR**

I. Overview

The State of Delaware Department of Natural Resources and Environmental Control, seeks professional services for outsourced specialty laboratory services. This request for proposals ("RFP") is issued pursuant to 29 *Del. C.* §§ [6981](#) and [6982](#).

The proposed schedule of events subject to the RFP is outlined below:

Public Notice	Date: August 8, 2014
Deadline for Questions	Date: August 13, 2014 at 4:00PM (Local Time)
Response to Questions Posted by:	Date: August 19, 2014
Deadline for Receipt of Proposals	Date: August 29, 2014 at 1:00 PM (Local Time)
Estimated Notification of Award	Date: within 90-days

Each proposal must be accompanied by a transmittal letter which briefly summarizes the proposing firm's interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP which the applicant may have taken in presenting the proposal. (Applicant exceptions must also be recorded on Attachment 3). The State of Delaware reserves the right to deny any and all exceptions taken to the RFP requirements.

MANDATORY PREBID MEETING

A mandatory pre-bid meeting has not been established for this Request for Proposal.

II. General Information

A. Background and Nature of Work

The State of Delaware Department of Natural Resources and Environmental Control (DNREC) has developed a multi-year program to assess toxic contamination in the State's waters, sediments and biota on a watershed scale. The name of the program is Watershed Approach to Toxic Assessment and Restoration (WATAR). In support of the program, DNREC requires certain specialty laboratory services not available through DNREC's laboratory or through other laboratories currently under contract with the state.

B. Statement of Work

The full State of Work appears as Appendix A of this RFP. Briefly, the work entails specialty laboratory services for filter, resin, sediment, water, and tissue samples on an "as and when" requested basis by DNREC. Analytes of interest include polychlorinated biphenyl (PCB) congeners, dioxins and furans, parent and alkylated polyaromatic hydrocarbons (PAHs), and organochlorine pesticides. Required detection limits appear in Appendix B of this RFP.

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III. Required Information

The following information shall be provided in each proposal in the order listed below. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the State.

A. Minimum Requirements

1. Provide Delaware license(s) necessary to perform services as identified in the scope of work.

Prior to the execution of an award document, the successful Vendor shall either furnish the Agency with proof of State of Delaware Business Licensure or initiate the process of application where required.

2. Vendor shall provide responses to the Request for Proposal (RFP) scope of work and clearly identify capabilities as presented in the General Evaluation Requirements below.
3. Complete all appropriate attachments and forms as identified within the RFP.
4. Proof of insurance and amount of insurance shall be furnished to the Agency prior to the start of the contract period and shall be no less than as identified in the bid solicitation, Section D, Item 7, subsection e.
5. Provide response to Employing Delawareans Report (Attachment 9)

6. Bidders must provide the required certifications listed in Appendix C, Part 1, A.1 of this RFP to be considered for a contract. DNREC may declare a bid non-responsive if the required certifications are not completed and submitted as requested.

Compliance with the certifications submitted to DNREC by the bidders is subject to verification by DNREC during the bid evaluation period (before award of a contract) and after award of a contract. DNREC will have the right to ask for additional information to verify bidders' compliance with the certifications before award of a contract. The bid will be declared non-responsive if any certification made by the Bidder is untrue, whether made knowingly or unknowingly. Failure to comply with the certifications or to comply with the request of DNREC for additional information will also render the bid non-responsive.

Certifications Precedent to Contract Award: The certifications listed in Appendix C, PART 1, A.1 should be completed and submitted with the bid, but may be submitted afterwards. If any of the required certifications are not completed and submitted as requested, DNREC will so inform the Bidder and provide the Bidder with a time frame within which to meet the requirement. Failure to comply with the requirement within that time period will render the bid non-responsive.

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IV. Professional Services RFP Administrative Information

A. RFP Issuance

1. Public Notice

Public notice has been provided in accordance with 29 *Del. C.* [§6981](#).

2. Obtaining Copies of the RFP

This RFP is available in electronic form through the State of Delaware Procurement website at www.bids.delaware.gov . Paper copies of this RFP will not be available.

3. Assistance to Vendors with a Disability

Vendors with a disability may receive accommodation regarding the means of communicating this RFP or participating in the procurement process. For more information, contact the Designated Contact no later than ten days prior to the deadline for receipt of proposals.

4. RFP Designated Contact

All requests, questions, or other communications about this RFP shall be made in writing to the State of Delaware. Address all communications to the person listed below; communications made to other State of Delaware personnel or attempting to ask questions by phone or in person will not be allowed or recognized as valid and may disqualify the vendor. Vendors should rely only on written statements issued by the RFP designated contact.

Richard W. Greene, Ph.D.
State of Delaware DNREC
Division of Watershed Stewardship
820 Silver Lake Blvd., Suite 220
Dover, DE 19904-2464
Richard.greene@state.de.us

To ensure that written requests are received and answered in a timely manner, electronic mail (e-mail) correspondence is acceptable, but other forms of delivery, such as postal and courier services can also be used.

5. Consultants and Legal Counsel

The State of Delaware may retain consultants or legal counsel to assist in the review and evaluation of this RFP and the vendors' responses. Bidders shall not contact the State's consultant or legal counsel on any matter related to the RFP.

6. Contact with State Employees

Direct contact with State of Delaware employees other than the State of Delaware Designated Contact regarding this RFP is expressly prohibited without prior consent. Vendors directly contacting State of Delaware employees risk elimination of their proposal from further consideration. Exceptions exist only for organizations currently doing business in the State who require contact in the normal course of doing that business.

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7. Organizations Ineligible to Bid

Any individual, business, organization, corporation, consortium, partnership, joint venture, or any other entity including subcontractors currently debarred or suspended is ineligible to bid. Any entity ineligible to conduct business in the State of Delaware for any reason is ineligible to respond to the RFP.

8. Exclusions

The Proposal Evaluation Team reserves the right to refuse to consider any proposal from a vendor who:

- a. Has been convicted for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of the contract or subcontract;
- b. Has been convicted under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or other offense indicating a lack of business integrity or business honesty that currently and seriously affects responsibility as a State contractor;
- c. Has been convicted or has had a civil judgment entered for a violation under State or Federal antitrust statutes;
- d. Has violated contract provisions such as;
 - 1) Knowing failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
 - 2) Failure to perform or unsatisfactory performance in accordance with terms of one or more contracts;
- e. Has violated ethical standards set out in law or regulation; and
- f. Any other cause listed in regulations of the State of Delaware determined to be serious and compelling as to affect responsibility as a State contractor, including suspension or debarment by another governmental entity for a cause listed in the regulations.

B. RFP Submissions

1. Acknowledgement of Understanding of Terms

By submitting a bid, each vendor shall be deemed to acknowledge that it has carefully read all sections of this RFP, including all forms, schedules and exhibits hereto, and has fully informed itself as to all existing conditions and limitations.

2. Proposals

To be considered, all proposals must be submitted in writing and respond to the items outlined in this RFP. The State reserves the right to reject any non-responsive or non-conforming proposals.

All properly sealed and marked proposals are to be sent to the State of Delaware and received no later than **1:00 PM (Local Time) on August 29, 2014**. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), US Mail, or by hand to:

Richard W. Greene, Ph.D.
State of Delaware DNREC
Division of Watershed Stewardship
820 Silver Lake Blvd., Suite 220
Dover, DE 19904-2464

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Vendors are directed to clearly print “BID ENCLOSED” and “CONTRACT NO. NAT14190-WATAR” on the outside of the bid submission package.

Any proposal submitted by US Mail shall be sent by either certified or registered mail. Proposals must be received at the above address no later than **1:00 PM (Local Time) on August 29, 2014**. Any proposal received after this date shall not be considered and shall be returned unopened. The proposing vendor bears the risk of delays in delivery. The contents of any proposal shall not be disclosed as to be made available to competing entities during the negotiation process.

Upon receipt of vendor proposals, each vendor shall be presumed to be thoroughly familiar with all specifications and requirements of this RFP. The failure or omission to examine any form, instrument or document shall in no way relieve vendors from any obligation in respect to this RFP.

3. Number of Copies With Mailing of Proposal

DNREC requests that bidders provide their bid in separately bound sections as follows:

Section 1 – Technical Bid (3 Hard Copies)

Section 2 – Financial Bid (3 Hard Copies)

Section 3 - Certifications (1 Hard Copy)

Section I: Technical Bid - In their technical bid, bidders should explain and demonstrate their understanding of the requirements contained in the bid solicitation and explain how they will meet these requirements. Bidders should demonstrate their capability for carrying out work described in a thorough, concise and clear manner. The Technical bid should address clearly and in sufficient depth the points that are subject to the evaluation criteria against which the bid will be evaluated. Simply repeating the statement contained in the bid solicitation is not sufficient. In order to facilitate the evaluation of the bid, DNREC requests that bidders address and present topics in the order of the evaluation criteria under the same headings. To avoid duplication, bidders may refer to different sections of their bids by identifying the specific paragraph and page number where the subject topic has already been addressed.

Section II: Financial Bid - Bidders must submit their financial bid in U.S. dollars in accordance with Appendix C, PART 2 (Financial Evaluation).

Section III: Certifications - Bidders must submit the certifications required under Part 5.

An electronic copy must also be provided on CD, DVD, or other media disk with the hard copy submission. For DNREC's convenience, electronic copies may also be submitted via electronic mail to Richard.greene@state.de.us. Electronic submission via email does not waive the requirement for hard copy and electronic submission via mail or hand-delivery.

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4. Proposal Modifications

Any changes, amendments or modifications to a proposal must be made in writing, submitted in the same manner as the original response and conspicuously labeled as a change, amendment or modification to a previously submitted proposal. Changes, amendments or modifications to proposals shall not be accepted or considered after the hour and date specified as the deadline for submission of proposals.

5. Proposal Costs and Expenses

The State of Delaware will not pay any costs incurred by any Vendor associated with any aspect of responding to this solicitation, including proposal preparation, printing or delivery, attendance at vendor's conference, system demonstrations or negotiation process.

6. Proposal Expiration Date

Prices quoted in the proposal shall remain fixed and binding on the bidder at least through November 29, 2014. The State of Delaware reserves the right to ask for an extension of time if needed.

7. Late Proposals

Proposals received after the specified date and time will not be accepted or considered. To guard against premature opening, sealed proposals shall be submitted, plainly marked with the proposal title, vendor name, and time and date of the proposal opening. Evaluation of the proposals is expected to begin shortly after the proposal due date. To document compliance with the deadline, the proposal will be date and time stamped upon receipt.

8. Proposal Opening

The State of Delaware will receive proposals until the date and time shown in this RFP. Proposals will be opened only in the presence of the State of Delaware personnel. Any unopened proposals will be returned to the submitting Vendor.

There will be no public opening of proposals but a public log will be kept of the names of all vendor organizations that submitted proposals. The contents of any proposal shall not be disclosed in accordance with [Executive Order # 31](#) and Title 29, Delaware Code, [Chapter 100](#).

9. Non-Conforming Proposals

Non-conforming proposals will not be considered. Non-conforming proposals are defined as those that do not meet the requirements of this RFP. The determination of whether an RFP requirement is substantive or a mere formality shall reside solely within the State of Delaware.

10. Concise Proposals

The State of Delaware discourages overly lengthy and costly proposals. It is the desire that proposals be prepared in a straightforward and concise manner. Unnecessarily elaborate brochures or other promotional materials beyond those sufficient to present a complete and effective proposal are not desired. The State of Delaware's interest is in the quality and responsiveness of the proposal.

11. Realistic Proposals

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It is the expectation of the State of Delaware that vendors can fully satisfy the obligations of the proposal in the manner and timeframe defined within the proposal. Proposals must be realistic and must represent the best estimate of time, materials and other costs including the impact of inflation and any economic or other factors that are reasonably predictable.

The State of Delaware shall bear no responsibility or increase obligation for a vendor's failure to accurately estimate the costs or resources required to meet the obligations defined in the proposal.

12. Confidentiality of Documents

All documents submitted as part of the vendor's proposal will be deemed confidential during the evaluation process. Vendor proposals will not be available for review by anyone other than the State of Delaware/Proposal Evaluation Team or its designated agents. There shall be no disclosure of any vendor's information to a competing vendor prior to award of the contract.

The State of Delaware is a public agency as defined by state law, and as such, it is subject to the Delaware Freedom of Information Act, [29 Del. C. Ch. 100](#). Under the law, all the State of Delaware's records are public records (unless otherwise declared by law to be confidential) and are subject to inspection and copying by any person. Vendor(s) are advised that once a proposal is received by the State of Delaware and a decision on contract award is made, its contents will become public record and nothing contained in the proposal will be deemed to be confidential except proprietary information.

Vendor(s) shall not include any information in their proposal that is proprietary in nature or that they would not want to be released to the public. Proposals must contain sufficient information to be evaluated and a contract written without reference to any proprietary information. If a vendor feels that they cannot submit their proposal without including proprietary information, they must adhere to the following procedure or their proposal may be deemed unresponsive and will not be recommended for selection. Vendor(s) must submit such information in a separate, sealed envelope labeled "Proprietary Information" with the RFP number. The envelope must contain a letter from the Vendor's legal counsel describing the documents in the envelope, representing in good faith that the information in each document is not "public record" as defined by [29 Del. C. § 10002\(d\)](#), and briefly stating the reasons that each document meets the said definitions.

Upon receipt of a proposal accompanied by such a separate, sealed envelope, the State of Delaware will open the envelope to determine whether the procedure described above has been followed.

13. Multi-Vendor Solutions (Joint Ventures)

Multi-vendor solutions (joint ventures) will be allowed only if one of the venture partners is designated as the "**prime contractor**". The "**prime contractor**" must be the joint venture's contact point for the State of Delaware and be responsible for the joint venture's performance under the contract, including all project management, legal and financial responsibility for the implementation of all vendor systems. If a joint venture is proposed, a copy of the joint venture agreement clearly describing the responsibilities of the partners must be submitted with the proposal. Services

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specified in the proposal shall not be subcontracted without prior written approval by the State of Delaware, and approval of a request to subcontract shall not in any way relieve Vendor of responsibility for the professional and technical accuracy and adequacy of the work. Further, vendor shall be and remain liable for all damages to the State of Delaware caused by negligent performance or non-performance of work by its subcontractor or its sub-subcontractor.

Multi-vendor proposals must be a consolidated response with all cost included in the cost summary. Where necessary, RFP response pages are to be duplicated for each vendor.

a. Primary Vendor

The State of Delaware expects to negotiate and contract with only one “prime vendor”. The State of Delaware will not accept any proposals that reflect an equal teaming arrangement or from vendors who are co-bidding on this RFP. The prime vendor will be responsible for the management of all subcontractors.

Any contract that may result from this RFP shall specify that the prime vendor is solely responsible for fulfillment of any contract with the State as a result of this procurement. The State will make contract payments only to the awarded vendor. Payments to any-subcontractors are the sole responsibility of the prime vendor (awarded vendor).

Nothing in this section shall prohibit the State of Delaware from the full exercise of its options under Section IV.B.16 regarding multiple source contracting.

b. Sub-contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and major subcontractors must be identified by name. **The prime vendor shall be wholly responsible for the entire contract performance whether or not subcontractors are used.** Any sub-contractors must be approved by State of Delaware.

c. Multiple Proposals

A primary vendor may not participate in more than one proposal in any form. Sub-contracting vendors may participate in multiple joint venture proposals.

14. Sub-Contracting

The vendor selected shall be solely responsible for contractual performance and management of all subcontract relationships. This contract allows subcontracting assignments; however, vendors assume all responsibility for work quality, delivery, installation, maintenance, and any supporting services required by a subcontractor.

Use of subcontractors must be clearly explained in the proposal, and subcontractors must be identified by name. Any sub-contractors must be approved by State of Delaware.

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15. Discrepancies and Omissions

Vendor is fully responsible for the completeness and accuracy of their proposal, and for examining this RFP and all addenda. Failure to do so will be at the sole risk of vendor. Should vendor find discrepancies, omissions, unclear or ambiguous intent or meaning, or should any questions arise concerning this RFP, vendor shall notify the State of Delaware's Designated Contact, in writing, of such findings at least ten (10) days before the proposal opening. This will allow issuance of any necessary addenda. It will also help prevent the opening of a defective proposal and exposure of vendor's proposal upon which award could not be made. All unresolved issues should be addressed in the proposal.

Protests based on any omission or error, or on the content of the solicitation, will be disallowed if these faults have not been brought to the attention of the Designated Contact, in writing, at least ten (10) calendar days prior to the time set for opening of the proposals.

a. RFP Question and Answer Process

The State of Delaware will allow written requests for clarification of the RFP. All questions will be consolidated into a single set of responses and posted on the State's website at www.bids.delaware.gov by the date of **August 13th, 4:00PM Local Time**. Vendor names will be removed from questions in the responses released. Questions should be submitted in the following format. Deviations from this format will not be accepted.

Section number

Paragraph number

Page number

Text of passage being questioned

Care should be taken by bidders to explain each question in sufficient detail in order to enable DNREC to provide an accurate answer. Technical inquiries that are of a proprietary nature must be clearly marked "proprietary" at each relevant item. Items identified as "proprietary" will be treated as such except where DNREC determines that the inquiry is not of a proprietary nature. DNREC may edit the questions or may request that the Bidder do so, so that the proprietary nature of the question is eliminated, and the inquiry can be answered with copies to all bidders. Inquiries not submitted in a form that can be distributed to all bidders may not be answered by DNREC.

16. State's Right to Reject Proposals

The State of Delaware reserves the right to accept or reject any or all proposals or any part of any proposal, to waive defects, technicalities or any specifications (whether they be in the State of Delaware's specifications or vendor's response), to sit and act as sole judge of the merit and qualifications of each product offered, or to solicit new proposals on the same project or on a modified project which may include portions of the originally proposed project as the State of Delaware may deem necessary in the best interest of the State of Delaware.

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17. State's Right to Cancel Solicitation

The State of Delaware reserves the right to cancel this solicitation at any time during the procurement process, for any reason or for no reason. The State of Delaware makes no commitments expressed or implied, that this process will result in a business transaction with any vendor.

This RFP does not constitute an offer by the State of Delaware. Vendor's participation in this process may result in the State of Delaware selecting your organization to engage in further discussions and negotiations toward execution of a contract. The commencement of such negotiations does not, however, signify a commitment by the State of Delaware to execute a contract nor to continue negotiations. The State of Delaware may terminate negotiations at any time and for any reason, or for no reason.

18. State's Right to Award Multiple Source Contracting

Pursuant to 29 *Del. C.* [§ 6986](#), the State of Delaware may award a contract for a particular professional service to two or more vendors if the agency head makes a determination that such an award is in the best interest of the State of Delaware.

19. Notification of Withdrawal of Proposal

Vendor may modify or withdraw its proposal by written request, provided that both proposal and request is received by the State of Delaware prior to the proposal due date. Proposals may be re-submitted in accordance with the proposal due date in order to be considered further.

Proposals become the property of the State of Delaware at the proposal submission deadline. All proposals received are considered firm offers at that time.

20. Revisions to the RFP

If it becomes necessary to revise any part of the RFP, an addendum will be posted on the State of Delaware's website at www.bids.delaware.gov. The State of Delaware is not bound by any statement related to this RFP made by any State of Delaware employee, contractor or its agents.

21. Exceptions to the RFP

Any exceptions to the RFP, or the State of Delaware's terms and conditions, must be recorded on Attachment 3. Acceptance of exceptions is within the sole discretion of the evaluation committee.

22. Award of Contract

The final award of a contract is subject to approval by the State of Delaware. The State of Delaware has the sole right to select the successful vendor(s) for award, to reject any proposal as unsatisfactory or non-responsive, to award a contract to other than the lowest priced proposal, to award multiple contracts, or not to award a contract, as a result of this RFP.

Notice in writing to a vendor of the acceptance of its proposal by the State of Delaware and the subsequent full execution of a written contract will constitute a contract, and no vendor will acquire any legal or equitable rights or privileges until the occurrence of both such events.

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a. RFP Award Notifications

After reviews of the evaluation committee report and its recommendation, and once the contract terms and conditions have been finalized, the State of Delaware will award the contract.

The contract shall be awarded to the vendor whose proposal is most advantageous, taking into consideration the evaluation factors set forth in the RFP.

It should be explicitly noted that the State of Delaware is not obligated to award the contract to the vendor who submits the lowest bid or the vendor who receives the highest total point score, rather the contract will be awarded to the vendor whose proposal is the most advantageous to the State of Delaware. The award is subject to the appropriate State of Delaware approvals.

After a final selection is made, the winning vendor will be invited to negotiate a contract with the State of Delaware; remaining vendors will be notified in writing of their selection status.

23. Cooperatives

Vendors, who have been awarded similar contracts through a competitive bidding process with a cooperative, are welcome to submit the cooperative pricing for this solicitation.

C. RFP Evaluation Process

An evaluation team composed of representatives of the State of Delaware will evaluate proposals on a variety of quantitative criteria. Neither the lowest price nor highest scoring proposal will necessarily be selected.

The State of Delaware reserves full discretion to determine the competence and responsibility, professionally and/or financially, of vendors. Vendors are to provide in a timely manner any and all information that the State of Delaware may deem necessary to make a decision.

1. Proposal Evaluation Team

The Proposal Evaluation Team shall be comprised of representatives of the State of Delaware. The Team shall determine which vendors meet the minimum requirements pursuant to selection criteria of the RFP and procedures established in 29 *Del. C.* §§ [6981](#) and [6982](#). The Team may negotiate with one or more vendors during the same period and may, at its discretion, terminate negotiations with any or all vendors. The Team shall make a recommendation regarding the award to the Department of Natural Resources and Environmental Control, who shall have final authority, subject to the provisions of this RFP and 29 *Del. C.* § [6982](#), to award a contract to the successful vendor in the best interests of the State of Delaware.

2. Proposal Selection Criteria

The Proposal Evaluation Team shall assign up to the maximum number of points for each Evaluation Item to each of the proposing vendor's proposals. All assignments of points shall be at the sole discretion of the Proposal Evaluation Team.

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The proposals shall contain the essential information on which the award decision shall be made. The information required to be submitted in response to this RFP has been determined by the State of Delaware to be essential for use by the Team in the bid evaluation and award process. Therefore, all instructions contained in this RFP shall be met in order to qualify as a responsive and responsible contractor and participate in the Proposal Evaluation Team's consideration for award. Proposals which do not meet or comply with the instructions of this RFP may be considered non-conforming and deemed non-responsive and subject to disqualification at the sole discretion of the Team.

The Team reserves the right to:

- Select for contract or for negotiations a proposal other than that with lowest costs.
- Reject any and all proposals or portions of proposals received in response to this RFP or to make no award or issue a new RFP.
- Waive or modify any information, irregularity, or inconsistency in proposals received.
- Request modification to proposals from any or all vendors during the contract review and negotiation.
- Negotiate any aspect of the proposal with any vendor and negotiate with more than one vendor at the same time.
- Select more than one vendor pursuant to 29 *Del. C.* §[6986](#).

Criteria Weight

All proposals shall be evaluated using the same criteria and scoring process. Refer to Appendix C for the criteria to be used by the Evaluation Team to evaluate proposals.

Vendors are encouraged to review the evaluation criteria and to provide a response that addresses each of the scored items. Evaluators will not be able to make assumptions about a vendor's capabilities so the responding vendor should be detailed in their proposal responses.

3. Proposal Clarification

The Evaluation Team may contact any vendor in order to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Proposals may not be modified as a result of any such clarification request.

4. References

The Evaluation Team may contact any customer of the vendor, whether or not included in the vendor's reference list, and use such information in the evaluation process. Additionally, the State of Delaware may choose to visit existing installations of comparable systems, which may or may not include vendor personnel. If the vendor is involved in such site visits, the State of Delaware will pay travel costs only for State of Delaware personnel for these visits.

5. Oral Presentations

After initial scoring and a determination that vendor(s) are qualified to perform the required services, selected vendors may be invited to make oral presentations to the

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Evaluation Team. All vendor(s) selected will be given an opportunity to present to the Evaluation Team.

The selected vendors will have their presentations scored or ranked based on their ability to successfully meet the needs of the contract requirements, successfully demonstrate their product and/or service, and respond to questions about the solution capabilities.

The vendor representative(s) attending the oral presentation shall be technically qualified to respond to questions related to the proposed system and its components. All of the vendor's costs associated with participation in oral discussions and system demonstrations conducted for the State of Delaware are the vendor's responsibility.

D. Contract Terms and Conditions

1. Contract Use by Other Agencies

REF: Title 29, Chapter [6904\(e\)](#) Delaware Code. If no state contract exists for a certain good or service, covered agencies may procure that certain good or service under another agency's contract so long as the arrangement is agreeable to all parties. Agencies, other than covered agencies, may also procure such goods or services under another agency's contract when the arrangement is agreeable to all parties.

2. Cooperative Use of Award

As a publicly competed contract awarded in compliance with 29 DE Code Chapter 69, this contract is available for use by other states and/or governmental entities through a participating addendum. Interested parties should contact the State Contract Procurement Officer identified in the contract for instruction. Final approval for permitting participation in this contract resides with the Director of Government Support Services and in no way places any obligation upon the awarded vendor(s).

3. General Information

- a. The term of the contract between the successful bidder and the State shall be for three years with two (2) optional extensions for a period of one (1) year for each extension.
- b. The selected vendor will be required to enter into a written agreement with the State of Delaware. The State of Delaware reserves the right to incorporate standard State contractual provisions into any contract negotiated as a result of a proposal submitted in response to this RFP. Any proposed modifications to the terms and conditions of the standard contract are subject to review and approval by the State of Delaware. Vendors will be required to sign the contract for all services, and may be required to sign additional agreements. **Sample of the State of Delaware's Professional Services Agreement can be found in Appendix E.**
- c. The selected vendor or vendors will be expected to enter negotiations with the State of Delaware, which will result in a formal contract between parties. Procurement will be in accordance with subsequent contracted agreement. This RFP and the selected vendor's response to this RFP will be incorporated as part of any formal contract.
- d. The State of Delaware's standard contract will most likely be supplemented with the vendor's software license, support/maintenance, source code escrow

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agreements, and any other applicable agreements. The terms and conditions of these agreements will be negotiated with the finalist during actual contract negotiations.

- e. The successful vendor shall promptly execute a contract incorporating the terms of this RFP within twenty (20) days after award of the contract. No vendor is to begin any service prior to receipt of a State of Delaware purchase order signed by two authorized representatives of the agency requesting service, properly processed through the State of Delaware Accounting Office and the Department of Finance. The purchase order shall serve as the authorization to proceed in accordance with the bid specifications and the special instructions, once it is received by the successful vendor.
- f. If the vendor to whom the award is made fails to enter into the agreement as herein provided, the award will be annulled, and an award may be made to another vendor. Such vendor shall fulfill every stipulation embraced herein as if they were the party to whom the first award was made.

4. Collusion or Fraud

Any evidence of agreement or collusion among vendor(s) and prospective vendor(s) acting to illegally restrain freedom from competition by agreement to offer a fixed price, or otherwise, will render the offers of such vendor(s) void.

By responding, the vendor shall be deemed to have represented and warranted that its proposal is not made in connection with any competing vendor submitting a separate response to this RFP, and is in all respects fair and without collusion or fraud; that the vendor did not participate in the RFP development process and had no knowledge of the specific contents of the RFP prior to its issuance; and that no employee or official of the State of Delaware participated directly or indirectly in the vendor's proposal preparation.

Advance knowledge of information which gives any particular vendor advantages over any other interested vendor(s), in advance of the opening of proposals, whether in response to advertising or an employee or representative thereof, will potentially void that particular proposal.

5. Lobbying and Gratuities

Lobbying or providing gratuities shall be strictly prohibited. Vendors found to be lobbying, providing gratuities to, or in any way attempting to influence a State of Delaware employee or agent of the State of Delaware concerning this RFP or the award of a contract resulting from this RFP shall have their proposal immediately rejected and shall be barred from further participation in this RFP.

The selected vendor will warrant that no person or selling agency has been employed or retained to solicit or secure a contract resulting from this RFP upon agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, the State of Delaware shall have the right to annul any contract resulting from this RFP without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

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All contact with State of Delaware employees, contractors or agents of the State of Delaware concerning this RFP shall be conducted in strict accordance with the manner, forum and conditions set forth in this RFP.

6. Solicitation of State Employees

Until contract award, vendors shall not, directly or indirectly, solicit any employee of the State of Delaware to leave the State of Delaware's employ in order to accept employment with the vendor, its affiliates, actual or prospective contractors, or any person acting in concert with vendor, without prior written approval of the State of Delaware's contracting officer. Solicitation of State of Delaware employees by a vendor may result in rejection of the vendor's proposal.

This paragraph does not prevent the employment by a vendor of a State of Delaware employee who has initiated contact with the vendor. However, State of Delaware employees may be legally prohibited from accepting employment with the contractor or subcontractor under certain circumstances. Vendors may not knowingly employ a person who cannot legally accept employment under state or federal law. If a vendor discovers that they have done so, they must terminate that employment immediately.

7. General Contract Terms

a. Independent Contractors

The parties to the contract shall be independent contractors to one another, and nothing herein shall be deemed to cause this agreement to create an agency, partnership, joint venture or employment relationship between parties. Each party shall be responsible for compliance with all applicable workers compensation, unemployment, disability insurance, social security withholding and all other similar matters. Neither party shall be liable for any debts, accounts, obligations or other liability whatsoever of the other party or any other obligation of the other party to pay on the behalf of its employees or to withhold from any compensation paid to such employees any social benefits, workers compensation insurance premiums or any income or other similar taxes.

It may be at the State of Delaware's discretion as to the location of work for the contractual support personnel during the project period. The State of Delaware may provide working space and sufficient supplies and material to augment the Contractor's services.

b. Temporary Personnel are Not State Employees Unless and Until They are Hired

Vendor agrees that any individual or group of temporary staff person(s) provided to the State of Delaware pursuant to this Solicitation shall remain the employee(s) of Vendor for all purposes including any required compliance with the Affordable Care Act by the Vendor. Vendor agrees that it shall not allege, argue, or take any position that individual temporary staff person(s) provided to the State pursuant to this Solicitation must be provided any benefits, including any healthcare benefits by the State of Delaware and Vendor agrees to assume the total and complete responsibility for the provision of any healthcare benefits required by the Affordable Care Act to aforesaid individual temporary staff person(s). In the event that the Internal Revenue Service, or any other third party governmental entity determines that the State of Delaware is a dual employer or the sole employer of any individual temporary staff person(s)

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provided to the State of Delaware pursuant to this Solicitation, Vendor agrees to hold harmless, indemnify, and defend the State to the maximum extent of any liability to the State arising out of such determinations.

Notwithstanding the content of the preceding paragraph, should the State of Delaware subsequently directly hire any individual temporary staff employee(s) provided pursuant to this Solicitation, the aforementioned obligations to hold harmless, indemnify, and defend the State of Delaware shall cease and terminate for the period following the date of hire. Nothing herein shall be deemed to terminate the Vendor's obligation to hold harmless, indemnify, and defend the State of Delaware for any liability that arises out of compliance with the ACA prior to the date of hire by the State of Delaware. Vendor will waive any separation fee provided an employee works for both the vendor and hiring agency, continuously, for a three (3) month period and is provided thirty (30) days written notice of intent to hire from the agency. Notice can be issued at second month if it is the State's intention to hire.

c. Licenses and Permits

In performance of the contract, the vendor will be required to comply with all applicable federal, state and local laws, ordinances, codes, and regulations. The cost of permits and other relevant costs required in the performance of the contract shall be borne by the successful vendor. The vendor shall be properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § [2502](#).

Prior to receiving an award, the successful vendor shall either furnish the State of Delaware with proof of State of Delaware Business Licensure or initiate the process of application where required. An application may be requested in writing to: Division of Revenue, Carvel State Building, P.O. Box 8750, 820 N. French Street, Wilmington, DE 19899 or by telephone to one of the following numbers: (302) 577-8200—Public Service, (302) 577-8205—Licensing Department.

Information regarding the award of the contract will be given to the Division of Revenue. Failure to comply with the State of Delaware licensing requirements may subject vendor to applicable fines and/or interest penalties.

d. Notice

Any notice to the State of Delaware required under the contract shall be sent by registered mail to:

Richard W. Greene, Ph.D.
State of Delaware DNREC
Division of Watershed Stewardship
820 Silver Lake Blvd., Suite 220
Dover, DE 19904-2464

e. Indemnification

1. General Indemnification

By submitting a proposal, the proposing vendor agrees that in the event it is awarded a contract, it will indemnify and otherwise hold harmless the State of

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Delaware, its agents and employees from any and all liability, suits, actions, or claims, together with all costs, expenses for attorney's fees, arising out of the vendor's, its agents and employees' performance work or services in connection with the contract, regardless of whether such suits, actions, claims or liabilities are based upon acts or failures to act attributable, whole or part, to the State, its employees or agents.

2. Proprietary Rights Indemnification

Vendor shall warrant that all elements of its solution, including all equipment, software, documentation, services and deliverables, do not and will not infringe upon or violate any patent, copyright, trade secret or other proprietary rights of any third party. In the event of any claim, suit or action by any third party against the State of Delaware, the State of Delaware shall promptly notify the vendor in writing and vendor shall defend such claim, suit or action at vendor's expense, and vendor shall indemnify the State of Delaware against any loss, cost, damage, expense or liability arising out of such claim, suit or action (including, without limitation, litigation costs, lost employee time, and counsel fees) whether or not such claim, suit or action is successful.

If any equipment, software, services (including methods) products or other intellectual property used or furnished by the vendor (collectively "Products") is or in vendor's reasonable judgment is likely to be, held to constitute an infringing product, vendor shall at its expense and option either:

- a. Procure the right for the State of Delaware to continue using the Product(s);
- b. Replace the product with a non-infringing equivalent that satisfies all the requirements of the contract; or
- c. Modify the Product(s) to make it or them non-infringing, provided that the modification does not materially alter the functionality or efficacy of the product or cause the Product(s) or any part of the work to fail to conform to the requirements of the Contract, or only alters the Product(s) to a degree that the State of Delaware agrees to and accepts in writing.

f. Insurance

1. Vendor recognizes that it is operating as an independent contractor and that it is liable for any and all losses, penalties, damages, expenses, attorney's fees, judgments, and/or settlements incurred by reason of injury to or death of any and all persons, or injury to any and all property, of any nature, arising out of the vendor's negligent performance under this contract, and particularly without limiting the foregoing, caused by, resulting from, or arising out of any act of omission on the part of the vendor in their negligent performance under this contract.
2. The vendor shall maintain such insurance as will protect against claims under Worker's Compensation Act and from any other claims for damages for personal injury, including death, which may arise from operations under this contract. The vendor is an independent contractor and is not an employee of the State of Delaware.

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3. During the term of this contract, the vendor shall, at its own expense, also carry insurance minimum limits as follows:

a.	Commercial General Liability	\$1,000,000 per occurrence / \$3,000,000 aggregate
----	------------------------------	-------------------------------------------------------

And at least one of the following, as outlined below:

b.	Medical or Professional Liability	\$1,000,000 per occurrence / \$3,000,000 aggregate
c.	Misc. Errors and Omissions	\$1,000,000 per occurrence / \$3,000,000 aggregate
d.	Product Liability	\$1,000,000 per occurrence / \$3,000,000 aggregate

The successful vendor must carry (a) and at least one of (b), (c), or (d) above, depending on the type of Service or Product being delivered.

If the contractual service requires the transportation of departmental clients or staff, the vendor shall, in addition to the above coverage's, secure at its own expense the following coverage;

a.	Automotive Liability (Bodily Injury)	\$100,000/\$300,000
b.	Automotive Property Damage (to others)	\$ 25,000

4. The vendor shall provide a Certificate of Insurance (COI) as proof that the vendor has the required insurance. The COI shall be provided prior to agency contact prior to any work being completed by the awarded vendor(s).
5. The State of Delaware shall not be named as an additional insured.
6. Should any of the above described policies be cancelled before expiration date thereof, notice will be delivered in accordance with the policy provisions.

g. Performance Requirements

The selected Vendor will warrant that it possesses, or has arranged through subcontractors, all capital and other equipment, labor, materials, and licenses necessary to carry out and complete the work hereunder in compliance with any and all Federal and State laws, and County and local ordinances, regulations and codes.

h. Vendor Emergency Response Point of Contact

The awarded vendor(s) shall provide the name(s), telephone, or cell phone number(s) of those individuals who can be contacted twenty four (24) hours a day, seven (7) days a week where there is a critical need for commodities or services when the Governor of the State of Delaware declares a state of emergency under the Delaware Emergency Operations Plan or in the event of a local emergency or disaster where a state governmental entity requires the services of the vendor. Failure to provide this information could render the proposal as non-responsive.

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In the event of a serious emergency, pandemic or disaster outside the control of the State, the State may negotiate, as may be authorized by law, emergency performance from the Contractor to address the immediate needs of the State, even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

i. Warranty

The Vendor will provide a warranty that the deliverables provided pursuant to the contract will function as designed for a period of no less than one (1) year from the date of system acceptance. The warranty shall require the Vendor correct, at its own expense, the setup, configuration, customizations or modifications so that it functions according to the State's requirements.

j. Costs and Payment Schedules

All contract costs must be as detailed specifically in the Vendor's cost proposal. No charges other than as specified in the proposal shall be allowed without written consent of the State of Delaware. The proposal costs shall include full compensation for all taxes that the selected vendor is required to pay.

The State of Delaware will require a payment schedule based on defined and measurable milestones. Payments for services will not be made in advance of work performed. The State of Delaware may require holdback of contract monies until acceptable performance is demonstrated (as much as 25%).

k. Penalties

The State of Delaware may include in the final contract penalty provisions for non-performance, such as liquidated damages.

l. Termination of Contract

The contract resulting from this RFP may be terminated as follows by Department of Natural Resources and Environmental Control.

- 1. Termination for Cause:** If, for any reasons, or through any cause, the Vendor fails to fulfill in timely and proper manner its obligations under this Contract, or if the Vendor violates any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this contract by giving written notice to the Vendor of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Vendor under this Contract shall, at the option of the State, become its property, and the Vendor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials which is usable to the State.

On receipt of the contract cancellation notice from the State, the Vendor shall have no less than five (5) days to provide a written response and may identify a method(s) to resolve the violation(s). A vendor response shall not effect or prevent the contract cancellation unless the State provides a written acceptance of the vendor response. If the State does accept the Vendor's method and/or action plan to correct the identified deficiencies, the State will define the time by which the Vendor must fulfill its corrective obligations. Final retraction of the

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State's termination for cause will only occur after the Vendor successfully rectifies the original violation(s). At its discretion the State may reject in writing the Vendor's proposed action plan and proceed with the original contract cancellation timeline.

2. **Termination for Convenience:** The State may terminate this Contract at any time by giving written notice of such termination and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents, data, studies, surveys, drawings, models, photographs, reports, supplies, and other materials shall, at the option of the State, become its property and the Vendor shall be entitled to receive compensation for any satisfactory work completed on such documents and other materials, and which is usable to the State.
3. **Termination for Non-Appropriations:** In the event the General Assembly fails to appropriate the specific funds necessary to enter into or continue the contractual agreement, in whole or part, the agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds. This is not a termination for convenience and will not be converted to such.

m. Non-discrimination

In performing the services subject to this RFP the vendor, as set forth in Title 19 Delaware Code Chapter 7 section [711](#), will agree that it will not discriminate against any employee or applicant with respect to compensation, terms, conditions or privileges of employment because of such individual's race, marital status, genetic information, color, age, religion, sex, sexual orientation, gender identity, or national origin. The successful vendor shall comply with all federal and state laws, regulations and policies pertaining to the prevention of discriminatory employment practice. Failure to perform under this provision constitutes a material breach of contract.

n. Covenant against Contingent Fees

The successful vendor will warrant that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement of understanding for a commission or percentage, brokerage or contingent fee excepting bona-fide employees, bona-fide established commercial or selling agencies maintained by the Vendor for the purpose of securing business. For breach or violation of this warranty the State of Delaware shall have the right to annul the contract without liability or at its discretion to deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

o. Vendor Activity

No activity is to be executed in an off shore facility, either by a subcontracted firm or a foreign office or division of the vendor. The vendor must attest to the fact that no activity will take place outside of the United States in its transmittal letter. Failure to adhere to this requirement is cause for elimination from future consideration.

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p. Vendor Responsibility

The State will enter into a contract with the successful Vendor(s). The successful Vendor(s) shall be responsible for all products and services as required by this ITB whether or not the Vendor or its subcontractor provided final fulfillment of the order. Subcontractors, if any, shall be clearly identified in the Vendor's proposal by completing Attachment 6, and are subject the approval and acceptance of Department of Natural Resources and Environmental Control.

q. Personnel, Equipment and Services

1. The Vendor represents that it has, or will secure at its own expense, all personnel required to perform the services required under this contract.
2. All of the equipment and services required hereunder shall be provided by or performed by the Vendor or under its direct supervision, and all personnel, including subcontractors, engaged in the work shall be fully qualified and shall be authorized under State and local law to perform such services.
3. None of the equipment and/or services covered by this contract shall be subcontracted without the prior written approval of the State. Only those subcontractors identified in Attachment 6 are considered approved upon award. Changes to those subcontractor(s) listed in Attachment 6 must be approved in writing by the State.

r. Fair Background Check Practices

Pursuant to 29 Del. C. [§6909B](#) and effective November 4, 2014 the State does not consider the criminal record, criminal history, credit history or credit score of an applicant for state employment during the initial application process unless otherwise required by state and/or federal law. Vendors doing business with the State are encouraged to adopt fair background check practices. Vendors can refer to 19 Del. C. [§711\(g\)](#) for applicable established provisions.

s. Work Product

All materials and products developed under the executed contract by the vendor are the sole and exclusive property of the State. The vendor will seek written permission to use any product created under the contract.

t. Contract Documents

The RFP, the purchase order, the executed contract and any supplemental documents between the State of Delaware and the successful vendor shall constitute the contract between the State of Delaware and the vendor. In the event there is any discrepancy between any of these contract documents, the following order of documents governs so that the former prevails over the latter: contract, State of Delaware's RFP, Vendor's response to the RFP and purchase order. No other documents shall be considered. These documents will constitute the entire agreement between the State of Delaware and the vendor.

u. Applicable Law

The laws of the State of Delaware shall apply, except where Federal Law has precedence. The successful vendor consents to jurisdiction and venue in the State of Delaware.

In submitting a proposal, Vendors certify that they comply with all federal, state and local laws applicable to its activities and obligations including:

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1. the laws of the State of Delaware;
2. the applicable portion of the Federal Civil Rights Act of 1964;
3. the Equal Employment Opportunity Act and the regulations issued there under by the federal government;
4. a condition that the proposal submitted was independently arrived at, without collusion, under penalty of perjury; and
5. that programs, services, and activities provided to the general public under resulting contract conform with the Americans with Disabilities Act of 1990, and the regulations issued there under by the federal government.

If any vendor fails to comply with (1) through (5) of this paragraph, the State of Delaware reserves the right to disregard the proposal, terminate the contract, or consider the vendor in default.

The selected vendor shall keep itself fully informed of and shall observe and comply with all applicable existing Federal and State laws, and County and local ordinances, regulations and codes, and those laws, ordinances, regulations, and codes adopted during its performance of the work.

v. Severability

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

w. Scope of Agreement

If the scope of any provision of the contract is determined to be too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the contract shall not thereby fail, but the scope of such provisions shall be curtailed only to the extent necessary to conform to the law.

x. Affirmation

The Vendor must affirm that within the past five (5) years the firm or any officer, controlling stockholder, partner, principal, or other person substantially involved in the contracting activities of the business is not currently suspended or debarred and is not a successor, subsidiary, or affiliate of a suspended or debarred business.

y. Audit Access to Records

The Vendor shall maintain books, records, documents, and other evidence pertaining to this Contract to the extent and in such detail as shall adequately reflect performance hereunder. The Vendor agrees to preserve and make available to the State, upon request, such records for a period of five (5) years

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from the date services were rendered by the Vendor. Records involving matters in litigation shall be retained for one (1) year following the termination of such litigation. The Vendor agrees to make such records available for inspection, audit, or reproduction to any official State representative in the performance of their duties under the Contract. Upon notice given to the Vendor, representatives of the State or other duly authorized State or Federal agency may inspect, monitor, and/or evaluate the cost and billing records or other material relative to this Contract. The cost of any Contract audit disallowances resulting from the examination of the Vendor's financial records will be borne by the Vendor. Reimbursement to the State for disallowances shall be drawn from the Vendor's own resources and not charged to Contract cost or cost pools indirectly charging Contract costs.

z. Other General Conditions

1. **Current Version** – “Packaged” application and system software shall be the most current version generally available as of the date of the physical installation of the software.
2. **Current Manufacture** – Equipment specified and/or furnished under this specification shall be standard products of manufacturers regularly engaged in the production of such equipment and shall be the manufacturer’s latest design. All material and equipment offered shall be new and unused.
3. **Volumes and Quantities** – Activity volume estimates and other quantities have been reviewed for accuracy; however, they may be subject to change prior or subsequent to award of the contract.
4. **Prior Use** – The State of Delaware reserves the right to use equipment and material furnished under this proposal prior to final acceptance. Such use shall not constitute acceptance of the work or any part thereof by the State of Delaware.
5. **Status Reporting** – The selected vendor will be required to lead and/or participate in status meetings and submit status reports covering such items as progress of work being performed, milestones attained, resources expended, problems encountered and corrective action taken, until final system acceptance.
6. **Regulations** – All equipment, software and services must meet all applicable local, State and Federal regulations in effect on the date of the contract.
7. **Changes** – No alterations in any terms, conditions, delivery, price, quality, or specifications of items ordered will be effective without the written consent of the State of Delaware.
8. **Purchase Orders** – Agencies that are part of the First State Financial (FSF) system are required to identify the contract number NAT14190-WATAR on all Purchase Orders (P.O.) and shall complete the same when entering P.O. information in the state’s financial reporting system.
9. **Additional Terms and Conditions** – The State of Delaware reserves the right to add terms and conditions during the contract negotiations.

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E. RFP Miscellaneous Information

1. No Press Releases or Public Disclosure

The State of Delaware reserves the right to pre-approve any news or broadcast advertising releases concerning this solicitation, the resulting contract, the work performed, or any reference to the State of Delaware with regard to any project or contract performance. Any such news or advertising releases pertaining to this solicitation or resulting contract shall require the prior express written permission of the State of Delaware.

The State will not prohibit or otherwise prevent the awarded vendor(s) from direct marketing to the State of Delaware agencies, departments, municipalities, and/or any other political subdivisions, however, the Vendor shall not use the State's seal or imply preference for the solution or goods provided.

2. Definitions of Requirements

To prevent any confusion about identifying requirements in this RFP, the following definition is offered: The words *shall*, *will* and/or *must* are used to designate a mandatory requirement. Vendors must respond to all mandatory requirements presented in the RFP. Failure to respond to a mandatory requirement may cause the disqualification of your proposal.

3. Production Environment Requirements

The State of Delaware requires that all hardware, system software products, and application software products included in proposals be currently in use in a production environment by a least three other customers, have been in use for at least six months, and have been generally available from the manufacturers for a period of six months. Unreleased or beta test hardware, system software, or application software will not be acceptable.

F. Attachments

The following attachments and appendixes shall be considered part of the solicitation:

- Attachment 1 – No Proposal Reply Form
- Attachment 2 – Non-Collusion Statement
- Attachment 3 – Exceptions
- Attachment 4 – Confidentiality and Proprietary Information
- Attachment 5 – Business References
- Attachment 6 – Subcontractor Information Form
- Attachment 7 – Monthly Usage Report
- Attachment 8 – Subcontracting (2nd Tier Spend) Report
- Attachment 9 – Employing Delawareans Report
- Attachment 10 – Office of Supplier Diversity Application
- Appendix A – Statement of Work
- Appendix B – Target Analytes and Required Detection Limits (Range)
- Appendix C – Evaluation Criteria and Basis of Selection
- Appendix D – Example of BEST VALUE Determination
- Appendix E – Example Professional Services Agreement

IMPORTANT – PLEASE NOTE

- **Attachments 2, 3, 4, 5 and 9 must be included in your proposal**
- Attachment 6 must be included in your proposal if subcontractors will be involved
- Attachments 7 and 8 represent required reporting on the part of awarded vendors. Those bidders receiving an award will be provided with active spreadsheets for reporting.

REQUIRED REPORTING

One of the primary goals in administering this contract is to keep accurate records regarding its actual value/usage. This information is essential in order to update the contents of the contract and to establish proper bonding levels if they are required. The integrity of future contracts revolves around our ability to convey accurate and realistic information to all interested parties.

A complete and accurate Usage Report (Attachment 7) shall be furnished in an **Excel format and submitted electronically**, no later than the 15th (or next business day after the 15th day) of each month, detailing the purchasing of all items on this contract. The reports shall be submitted and sent as an attachment to vendorusage@state.de.us. Submitted reports shall contain accurate descriptions of the products, goods or services procured, purchasing agency information, including the six-digit department and organization code, quantities procured and prices paid. Any exception to this mandatory requirement or failure to submit complete reports, or in the format required, may result corrective action, up to and including the possible cancellation of the award. Failure to provide the report with the minimum required information may also negate any contract extension clauses. Additionally, Vendors who are determined to be in default of this mandatory report requirement may have such conduct considered against them, in assessment of responsibility, in the evaluation of future proposals.

AGENCIES MAY NOT REMOVE SUBCONTRACTING 2ND TIER REPORTS – required by
Executive Order.

In accordance with Executive Order 44, the State of Delaware is committed to supporting its diverse business industry and population. The successful Vendor will be required to accurately report on the participation by Diversity Suppliers which includes: minority (MBE), woman (WBE), veteran owned business (VOBE), or service disabled veteran owned business (SDVOBE) under this awarded contract. The reported data elements shall include but not be limited to; name of state contract/project, the name of the Diversity Supplier, Diversity Supplier contact information (phone, email), type of product or service provided by the Diversity Supplier and any minority, women, veteran, or service disabled veteran certifications for the subcontractor (State OSD certification, Minority Supplier Development Council, Women's Business Enterprise Council, VetBiz.gov). The format used for Subcontracting 2nd Tier report is shown as in Attachment 8.

Accurate 2nd tier reports shall be submitted to the contracting Agency's Office of Supplier Diversity at vendorusage@state.de.us on the 15th (or next business day) of the month following each quarterly period. For consistency quarters shall be considered to end the last day of March, June, September and December of each calendar year. Contract spend during the covered periods shall result in a report even if the contract has expired by the report due date.

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Attachment 1

NO PROPOSAL REPLY FORM

Contract No. NAT14190-WATAR

Contract Title: Watershed Approach to Toxics Assessment and Restoration

To assist us in obtaining good competition on our Request for Proposals, we ask that each firm that has received a proposal, but does not wish to bid, state their reason(s) below and return in a clearly marked envelope displaying the contract number. This information will not preclude receipt of future invitations unless you request removal from the Vendor's List by so indicating below, or do not return this form or bona fide proposal.

Unfortunately, we must offer a "No Proposal" at this time because:

- | | |
|-------|-------------------------------------------------------------------------------------------------------------------------------------|
| _____ | 1. We do not wish to participate in the proposal process. |
| _____ | 2. We do not wish to bid under the terms and conditions of the Request for Proposal document. Our objections are:

_____ |
| _____ | 3. We do not feel we can be competitive. |
| _____ | 4. We cannot submit a Proposal because of the marketing or franchising policies of the manufacturing company. |
| _____ | 5. We do not wish to sell to the State. Our objections are:

_____ |
| _____ | 6. We do not sell the items/services on which Proposals are requested. |
| _____ | 7. Other: _____
_____ |

FIRM NAME

SIGNATURE

_____ We wish to remain on the Vendor's List **for these goods or services.**

_____ We wish to be deleted from the Vendor's List **for these goods or services.**

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Attachment 2

CONTRACT NO.: NAT14190-WATAR
CONTRACT TITLE: Watershed Approach to Toxics Assessment and Restoration
OPENING DATE: August 29, 2014 at 1:00 PM (Local Time)

NON-COLLUSION STATEMENT

This is to certify that the undersigned Vendor has neither directly nor indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this proposal, **and further certifies that it is not a sub-contractor to another Vendor who also submitted a proposal as a primary Vendor in response to this solicitation** submitted this date to the State of Delaware, Department of Natural Resources and Environmental Control.

It is agreed by the undersigned Vendor that the signed delivery of this bid represents the Vendor's acceptance of the terms and conditions of this solicitation including all specifications and special provisions.

NOTE: Signature of the authorized representative **MUST** be of an individual who legally may enter his/her organization into a formal contract with the State of Delaware, Department of Natural Resources and Environmental Control.

COMPANY NAME _____ Check one)

<input type="checkbox"/>	Corporation
<input type="checkbox"/>	Partnership
<input type="checkbox"/>	Individual

NAME OF AUTHORIZED REPRESENTATIVE
(Please type or print) _____

SIGNATURE _____ TITLE _____

COMPANY ADDRESS _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

FEDERAL E.I. NUMBER _____ STATE OF DELAWARE
LICENSE NUMBER _____

COMPANY CLASSIFICATIONS: CERT. NO.: _____	Certification type(s)	Circle all that apply	
	Minority Business Enterprise (MBE)	Yes	No
	Woman Business Enterprise (WBE)	Yes	No
	Disadvantaged Business Enterprise (DBE)	Yes	No
	Veteran Owned Business Enterprise (VOBE)	Yes	No
	Service Disabled Veteran Owned Business Enterprise (SDVOBE)	Yes	No

[The above table is for informational and statistical use only.]

PURCHASE ORDERS SHOULD BE SENT TO:

(COMPANY NAME) _____

ADDRESS _____

CONTACT _____

PHONE NUMBER _____ FAX NUMBER _____

EMAIL ADDRESS _____

AFFIRMATION: Within the past five years, has your firm, any affiliate, any predecessor company or entity, owner, Director, officer, partner or proprietor been the subject of a Federal, State, Local government suspension or debarment?

YES _____ NO _____ if yes, please explain _____

THIS PAGE SHALL HAVE ORIGINAL SIGNATURE, BE NOTARIZED AND BE RETURNED WITH YOUR PROPOSAL

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____, 20 _____

STATE OF DELAWARE

Department of Natural Resources and Environmental Control

Notary Public _____ My commission expires _____

City of _____ County of _____ State of _____

Attachment 3

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Attachment 5

Contract No. NAT14190-WATAR

Contract Title: Watershed Approach to Toxics Assessment and Restoration

BUSINESS REFERENCES

List a minimum of three business references, including the following information:

- Business Name and Mailing address
- Contact Name and phone number
- Number of years doing business with
- Type of work performed

Please do not list any State Employee as a business reference. If you have held a State contract within the last 5 years, please provide a separate list of the contract(s).

1.	Contact Name & Title:	
	Business Name:	
	Address:	
	Email:	
	Phone # / Fax #:	
	Current Vendor (YES or NO):	
	Years Associated & Type of Work Performed:	
2.	Contact Name & Title:	
	Business Name:	
	Address:	
	Email:	
	Phone # / Fax #:	
	Current Vendor (YES or NO):	
	Years Associated & Type of Work Performed:	
3.	Contact Name & Title:	
	Business Name:	
	Address:	
	Email:	
	Phone # / Fax #:	
	Current Vendor (YES or NO):	
	Years Associated & Type of Work Performed:	

STATE OF DELAWARE PERSONNEL MAY NOT BE USED AS REFERENCES.

STATE OF DELAWARE

Department of Natural Resources and Environmental Control

Attachment 6

SUBCONTRACTOR INFORMATION FORM

PART I – STATEMENT BY PROPOSING VENDOR		
1. CONTRACT NO. NAT14190-WATAR	2. Proposing Vendor Name:	3. Mailing Address
4. SUBCONTRACTOR		
a. NAME	4c. Company OSD Classification: Certification Number: _____	
b. Mailing Address:	4d. Women Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4e. Minority Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4f. Disadvantaged Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4g. Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No 4h. Service Disabled Veteran Owned Business Enterprise <input type="checkbox"/> Yes <input type="checkbox"/> No	
5. DESCRIPTION OF WORK BY SUBCONTRACTOR		
6a. NAME OF PERSON SIGNING	7. BY (Signature)	8. DATE SIGNED
6b. TITLE OF PERSON SIGNING		
PART II – ACKNOWLEDGEMENT BY SUBCONTRACTOR		
9a. NAME OF PERSON SIGNING	10. BY (Signature)	11. DATE SIGNED
9b. TITLE OF PERSON SIGNING		

* Use a separate form for each subcontractor

STATE OF DELAWARE
Department of Natural Resources and Environmental Control

Attachment 7

STATE OF DELAWARE
MONTHLY USAGE REPORT

SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY

State of Delaware									
Monthly Usage Report									
Supplier Name:				Enter Contract No.	Report Start Date:				
Contact Name:			Report End Date:						
Contact Phone:			Today's Date:						
Agency Name or School District	Division or Name of School	Budget Code	UNSPSC	Item Description	Contract Item Number	Unit of Measure	Qty	Contract Proposal Price/Rate	Total Spend
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00
									\$0.00

Note: A copy of the Usage Report will be sent by electronic mail to the Awarded Vendor. The report shall be submitted electronically in **EXCEL** and sent as an attachment to vendorusage@state.de.us. It shall contain the six-digit department and organization code for each agency and school district.

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Department of Natural Resources and Environmental Control

Attachment 8

SAMPLE REPORT - FOR ILLUSTRATION PURPOSES ONLY

State of Delaware																
Subcontracting (2nd tier) Quarterly Report																
Prime Name:							Report Start Date:									
Contract Name/Number							Report End Date:									
Contact Name:							Today's Date:									
Contact Phone:							*Minimum Required		Requested detail							
Vendor Name*	Vendor TaxID*	Contract Name/ Number*	Vendor Contact Name*	Vendor Contact Phone*	Report Start Date*	Report End Date*	Amount Paid to Subcontractor*	Work Performed by Subcontractor UNSPSC	M/WBE Certifying Agency	Veteran /Service Disabled Veteran Certifying Agency	2nd tier Supplier Name	2nd tier Supplier Address	2nd tier Supplier Phone Number	2nd tier Supplier email	Description of Work Performed	2nd tier Supplier Tax Id

Note: A copy of the Subcontracting Quarterly Report will be sent by electronic mail to the Awarded Vendor.

Completed reports shall be saved in an Excel format, and submitted to the following email address: vendorusage@state.de.us

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Attachment 9

Contract No. NAT14190-WATAR

Contract Title: Watershed Approach to Toxics Assessment and Restoration

EMPLOYING DELAWAREANS REPORT

As required by House Bill # 410 (Bond Bill) of the 146th General Assembly and under Section 30, No bid for any public works or professional services contract shall be responsive unless the prospective bidder discloses its reasonable, good-faith determination of:

1. Number of employees reasonable anticipated to be employed on the project: _____
2. Number and percentage of such employees who are bona fide legal residents of Delaware: _____
Percentage of such employees who are bona fide legal residents of Delaware: _____
3. Total number of employees of the bidder: _____
4. Total percentage of employees who are bona fide resident of Delaware: _____

If subcontractors are to be used:

1. Number of employees who are residents of Delaware: _____
2. Percentage of employees who are residents of Delaware: _____

"Bona fide legal resident of this State" shall mean any resident who has established residence of at least 90 days in the State.

State of Delaware
Office of Supplier Diversity
Certification Application

The most recent application can be downloaded from the following site:

<http://gss.omb.delaware.gov/osd/certify.shtml>

Submission of a completed Office of Supplier Diversity (OSD) application is optional and does not influence the outcome of any award decision.

The minimum criteria for certification require the entity must be at least 51% owned and actively managed by a person or persons who are eligible: minorities, women, veterans, and/or service disabled veterans. Any one or all of these categories may apply to a 51% owner.



Complete application and mail, email or fax to:

Office of Supplier Diversity (OSD)
100 Enterprise Place, Suite 4
Dover, DE 19904-8202
Telephone: (302) 857-4554 Fax: (302) 677-7086
Email: osd@state.de.us
Web site: <http://gss.omb.delaware.gov/osd/index.shtml>

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**THE OSD ADDRESS IS FOR OSD APPLICATIONS ONLY.
NO BID RESPONSE PACKAGES WILL BE ACCEPTED BY THE OSD.**

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**APPENDIX A
STATEMENT OF WORK**

1. **General:** To provide analytical services, including the results of the analysis for DNREC on an as and when requested during the period of the Contract. The analysis will be performed on filter, XAD resin, water, sediment or tissue samples, as and when requested, for some or all of the suites as listed herein. The water, sediment, and tissue (fish) samples will be collected from State of Delaware watersheds to determine the levels of target analytes (PCB Congeners, Dioxin and Furan congeners, OC pesticides and metabolites, and parent and alkylated PAHs) in support of ongoing DNREC activities in the WATAR program. The WATAR program has unique requirements including:
- a) An ability to achieve very low detection and quantification limits (with correspondingly low and demonstrated blank level control limits) in whole water samples and in water samples separated into filter and XAD resin portions.
 - b) An ability to determine target analyte levels in both dissolved and particulate bound phases of water samples collected.
 - c) The laboratory must have existing procedures to process large volume water samples, submitted in 15-25L carboys provided by the laboratory. Carboys must be processed at the laboratory to produce particulate bound fractions of target analytes on glass wound or glass fiber filters and dissolved phase fractions of target analytes on XAD resin. The purpose of utilizing carboys for sampling is to increase amount of target analyte in each phase to determine target analyte partitioning. There will be one carboy for each sample and all analysis must be performed from that sample. The ability of a laboratory to produce a common extract from filters and XAD for all analysis is required. The ability of a laboratory to fractionate extracts on clean-up columns after extraction, such that splitting of extracts is minimized, is strongly desired to provide the lowest possible detection limits.
 - d) The use of isotope dilution or internal standard methods is required to maximize detection limit capability and accuracy of results.

Approximately 40% of the samples will be XAD resin or glass wound filter, 20% water, 20% sediment, and 20% tissue (primarily fish).

2. **Analyses Required:** The following analyses must be completed by the successful bidder:
- a) Analysis of glass wound filter, XAD resin, water, sediment, and tissue by EPA 1668A (full 209) congeners. Analysis of whole water samples are to be based on nominal 2.5-L grab samples and shall conform to protocols established by the Delaware River Basin Commission (DRBC).
 - b) Analysis of glass wound filter, XAD resin, water, sediment, and tissue by EPA 1613B.
 - c) Analysis of glass wound filter, XAD resin, water, sediment, and tissue for OC pesticides using isotope dilution and HRMS (modified EPA 1699 or an equivalent).
 - d) Analysis of glass wound filter, XAD resin, water, sediment, and tissue for PAH and alkylated PAH compounds by EPA 8270C/D or EPA 1625 (application of isotope dilution to EPA 8270 / EPA 625).
 - e) Homogenization of tissue for subsequent analysis by established laboratory procedures.
 - f) Pre-cleaning of filters and filter columns / holders, XAD resin and XAD resin columns and carboys by established laboratory procedures to meet established blank control levels.
 - g) Processing of Carboy water samples by established laboratory procedures to produce filter and XAD resin samples for subsequent analysis of each by specified methods.
3. **Tasks:** The analytical services requested may include some or all of the following tasks:

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- a) Preparation of XAD resin and columns including purchasing resin, cleaning resin, cleaning columns, cleaning retaining rings, cleaning fittings; packing columns with XAD resin. Proofing of columns and media should be performed as per existing analytical procedures specified by the laboratory. Resin and columns are to be supplied by the contractor and included in costs.
- b) Supply, cleaning, proofing and shipment of carboys sampling devices to DNREC.
- c) Processing of returned carboy samples in the laboratory to produce glass wound filter (particulate) and XAD resin (dissolved phase) samples for subsequent analysis for PCBs, Dioxins and Furans, OC Pesticides, and PAHs + alkylated PAHs.
- d) Extraction of XAD resin samples, in batches up to 15 samples, for subsequent analysis for PCBs, Dioxins and Furans, OC Pesticides, and PAHs + alkylated PAHs.
- e) Extraction of Glass fibre filters (suspended sediment) samples, in batches up to 15 samples at a time, for subsequent analysis of PCBs, Dioxins and Furans, OC Pesticides, and PAHs and alkylated PAHs. Results to be reported on a pg/L or ng/L basis.
- f) Extraction of whole water samples or filtered water samples from approx. 2.5L nominal samples for PCBs, Dioxins and Furans, OC Pesticides, and PAHs and alkylated PAHs.
- g) Homogenization of tissue samples as required.
- h) Analysis of fish tissue or other tissue as directed. Analyses required are PCB congeners, Dioxins and Furans, OC Pesticides, and PAHs plus alkylated PAHs. Moisture and % lipid will be performed on each sample. Results will be reported as pg/g or ng/g wet weight basis.
- i) Analysis of sediment samples for PCB congeners, Dioxins and Furans, OC Pesticides, and PAHs plus alkylated PAHs. Moisture determination will be performed for each sample. Results will be reported as pg/g or ng/g dry weight basis.
- j) Analyte lists are supplied in Appendix B. Typical detection limits shall be no greater than those detailed in Appendix B and should account for any effects of matrix on the detection system and for recovery achieved through the analytical work-up. A limited number of samples may require multiple analysis per extraction.

Field duplicates are to be considered as samples. Method blanks, laboratory control samples, and laboratory replicate analyses are to be conducted as part of contractors QA/QC program, and not to be considered as samples submitted.

4. Data & Information Deliverables: Data reports are to be forwarded to DNREC within 8 weeks following receipt of samples. This is to include:

- a) EPA Level IV Data Package per Analytical Batch. Must be on paginated CD in PDF format.
- b) Excel based EDD worksheet with all sample identification, results, QC, and flagging results.
- c) DNREC EQuIS EDD format.
- d) For each format required, the bidding Laboratory is to provide example products from one of the requested tests. All data should be reported to estimated detection limits similar to those specified in EPA 1668A/C and EPA 1613B (based on signal to noise ratio for each mass required for each parameter).

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APPENDIX B
TARGET ANALYTES AND REQUESTED DETECTION LIMITS (RANGE)

Matrix	Water	Sediment	Tissue	Resin	Filter
Units	pg/L	pg/g	pg/g	pg/L	pg/L
Sample Size	2.5 L	10 g	10 g	20 L	20 L
209 PCB Congeners	0.5 – 1.0	0.1 - 0.2	0.1 - 0.2	0.05 – 0.10	0.05 – 0.10
2,3,7,8-Substituted Dioxins and Furans	0.2 – 0.4	0.05 - 0.10	0.05 - 0.10	0.025 – 0.05	0.025 – 0.05
Organochlorine Pesticides (see target List 1 below)	40 - 80	10 - 20	10 - 20	5 - 10	5 - 10
Organochlorine Pesticides (see target List 2 below)	200	50	50	25	25
Organochlorine Pesticides (see target List 3 below)	400	100	100	50	50
Polycyclic Aromatic Hydrocarbons and Alkylated Homologs (see target list below)	400 - 800	500 - 1000	100 - 200	250 - 500	250 - 500

TARGET LIST OF ORGANOCHLORINE PESTICIDES

Target Organochlorine Pesticides include List 1, 2 and 3.

List 1	List 2	List 3
Hexachlorobenzene	HCH, delta	Technical Toxaphene
HCH, alpha	Heptachlor Epoxide	Methoxychlor
HCH, beta	alpha-Endosulfan	
HCH, gamma	Dieldrin	
Heptachlor	Endrin	
Aldrin	beta-Endosulfan	
Chlordane, oxy-	Endosulfan Sulfate	
Chlordane, gamma (trans)	Endrin Aldehyde	
Chlordane, alpha (cis)	Endrin Ketone	
Nonachlor, trans-		
Nonachlor, cis-		
2,4'-DDD		
4,4'-DDD		
2,4'-DDE		
4,4'-DDE		
2,4'-DDT		
4,4'-DDT		
Mirex		

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TARGET LIST OF POLYAROMATIC HYDROCARBONS (PAHs) AND ALKYLATED HOMOLOGS

Target PAHs include List 1, 2 and 3.

List 1 – Standard PAH Parents and Select Alkylated PAHs	List 2 – Additional Alkylated PAHs	List 3 – Extended Alkylated PAHs
Naphthalene	1-methylnaphthalene	C1-Biphenyls
Acenaphthylene	C1-Naphthalenes	C2-Biphenyls
Acenaphthene	1,2-Dimethylnaphthalene	C1-Acenaphthenes
Fluorene	C2-Naphthalenes	2-Methylfluorene
Phenanthrene	2,3,6-Trimethylnaphthalene	C1-Fluorenes
Anthracene	C3-Naphthalenes [†]	1,7-Dimethylfluorene
Fluoranthene	1,4,6,7-Tetramethylnaphthalene	C2-Fluorenes
Pyrene	C4-Naphthalenes	C3-Fluorenes
Benz(a)anthracene	2-Methylphenanthrene	2/3-Methyldibenzothiophenes
Chrysene	3-Methylphenanthrene	C1-Dibenzothiophene
Benzo(b)fluoranthene	9/4-Methylphenanthrenes	2,4-Dimethyldibenzothiophene
Benzo(j/k)fluoranthenes	2-Methylantracene	C2-Dibenzothiophene
Benzofluoranthenes	C1-Phenanthrenes/Anthracenes	C3-Dibenzothiophene
Benzo(e)pyrene	1,7-Dimethylphenanthrene	C4-Dibenzothiophene
Benzo(a)pyrene	1,8-Dimethylphenanthrene	3-Methylfluoranthene/Benzo(a)fluorene
Perylene	2,6-Dimethylphenanthrene	C1-Fluoranthenes/Pyrenes
Dibenzo(ah)anthracene	3,6-Dimethylphenanthrene	C2-Fluoranthenes/Pyrenes
Indeno(1,2,3-cd)pyrene	C2-Phenanthrenes/Anthracenes	C3-Fluoranthenes/Pyrenes
Benzo(ghi)perylene	1,2,6-Trimethylphenanthrene	C4-Fluoranthenes/Pyrenes
2-Methylnaphthalene	C3-Phenanthrenes/Anthracenes	1-Methylchrysene
2,6-Dimethylnaphthalene	Retene	5/6-Methylchrysenes
2,3,5-Trimethylnaphthalene	C4-Phenanthrenes/Anthracenes	C1-Benz(a)anthracenes/Chrysenes
1-Methylphenanthrene	Biphenyl	5,9-Dimethylchrysene
Dibenzothiophene		C2-Benz(a)anthracenes/Chrysenes
		C3-Benz(a)anthracenes/Chrysenes
		C4-Benz(a)anthracenes/Chrysenes
		7-Methylbenzo(a)pyrene
		C1-Benzofluoranthenes/Benzopyrenes
		C2-Benzofluoranthenes/Benzopyrenes

**APPENDIX C
EVALUATION CRITERIA AND BASIS OF SELECTION**

I. TECHNICAL EVALUATION CRITERIA

A. Mandatory Requirements: Any proposal which fails to meet the following mandatory requirements will be deemed non-responsive and will receive no further consideration. The words "shall", "must", "essential", "will" and "required" in the RFP are to be interpreted as mandatory requirements. The Bidder must include sufficient details and documentation at time of bid closing to demonstrate its experience and ability to meet the following mandatory criteria.

1. Bidder must have relevant accreditations from a recognized accrediting body (State, NELAP, or ISO 17025) for all parameters specified in the following matrices:
 - Dioxins and Furans by 1613B in Aqueous, Solid, and Tissue matrices;
 - PCB Congeners by EPA 1668A/C - Aqueous, Solid and Tissue matrices;
 - HRMS OC Pesticides based on EPA 1699 or equivalent - Aqueous, Solid and Tissue matrices; and
 - PAHs and Alkylated PAHs by EPA 8270 C/D or EPA 1625 – Aqueous, Solid, and Tissue matrices.

The bidder should provide a list of 3rd party proficiency testing or inter-calibration exercises completed for each test in these matrices. The bidder should provide reports demonstrating proficiency in each test for aqueous, solid, and tissue matrices.

2. Bidder must demonstrate a minimum of 3 years experience in preparation and handling of XAD resin and glass wound filters for each analytical test requested. Bidder should describe standard operation operating procedures in this area with defined blank acceptance criteria.
3. Bidder must have 3 years experience in performing all organic contaminants analysis requested, at detection levels compliant with those requested, in glass wound filter, XAD, aqueous, solid, and tissue matrices.
4. Bidder must provide proof of lab performance from XAD and glass wound filters created from carboy samples from the past 12 months including lab blank results derived from resin extract, for parameters of interest, and including the recovery of surrogates added at the extraction step for each analysis.
5. Bidder must submit a description of detection limits for each test and matrix requested – including all individual parameters and congeners within each test.
6. Bidder must have 3 years experience in performing analysis of any or all of the parameters listed from a single sample of resin, glass wound filter, water, sediment or tissue (i.e., common extraction and fractionation).

B. Point-Rated Criteria: Bidders who meet the mandatory criteria above will then be evaluated based upon the point-rated criteria described below. The maximum possible score for technical merit is 100 points. Bids which score 65 points or less for technical merit will be eliminated from further consideration.

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1. Demonstrated experience with ultra- trace analyses for all tests and parameters identified in Appendix A, utilizing XAD resin samples and glass wound filter matrices – **20 Points**.
2. Demonstrated experience in processing samples similar to those found in Delaware River Basin waters for all listed analytes for water, tissue, and sediment – **20 Points**. **Action - Submit a summary of previous relevant work including experience in processing samples similar to those found in Delaware River Basin waters.**
3. Demonstrated ability to achieve appropriate detection limits and laboratory blanks to meet data quality objectives. Blank correction or subtractions for determination of sample concentration are not to be used. – **20 Points**. **Action - Submit recent (within the last year) Detection Limits and blank QC acceptance data (QC acceptance limits based on mean plus two standard deviations from multiple method blank) for whole water methods, tissue and sediment methods for all methods and parameters requested.**
4. Demonstrated the extent of the use of labelled surrogates spikes for quantification by isotope dilution / recovery correction within all analytical methods. Include QC acceptance criteria for surrogate recovery and OPR (Ongoing Precision and Recovery) samples for each method. Preference will be given for methodologies that utilize C13 or other stable isotopes labelled surrogates to assess and ensure data quality. - **10 Points**. **Action - Identify all surrogates and applicable QC acceptance criteria for each method requested.**
5. Effectiveness of quality control program as demonstrated in relevant Performance Evaluation studies – **10 Points**. **Action - Provide a list of all/ Performance Evaluation studies and scores within the last 3 years for all methods and matrices available.**
6. Bidders organization and personnel assigned to work with DNREC, their relevant experience in similar projects, contract supervision plus facilities and equipment. – **10 Points**. **Action - The Bidder should demonstrate the background experience and resource capabilities of its organization and key personnel as it relates to this requirement.**
7. Demonstrate the capacity of generating sample data in the Level IV data packages, excel based formats, and DNREC EQUIS Database formats. – **10 Points**. **Action - Provide details and examples of current reporting formats using analysis requested in this RFP.**

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STATE OF DELAWARE

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II. FINANCIAL EVALUATION

Bidder must submit their financial bid in the tabular format that follows. The usage numbers provided below are estimates and are provided for evaluation purposes only. Bidders must provide a price for all items detailed below even if there is no estimated usage given. Prices are to be firm unit prices in U.S. Dollars and will be evaluated as such.

Item	Description	Estimated Usage Per Year	Unit Price (EACH)	Unit Price x Est. Usage per Year
1	Carboy supply, cleaning, proofing, and shipment to DNREC	20		
2	Carboy processing to produce glass wound filter samples and XAD resin samples from DNREC-submitted Carboys. Includes preparation of columns to hold filters and XAD. Includes media cost and proofing costs.	20		
3	Analysis of Glass Wound Filters for PCB congeners by EPA 1668A; dioxins & furans by EPA 1613B; and OC Pesticides by EPA 1699 or equivalent, all from a common extract.	25		
4	Analysis of XAD Resin for PCB congeners by EPA 1668A; dioxins & furans by EPA 1613B; and OC Pesticides by EPA 1699 or equivalent, all from a common extract.	25		
5	Analysis of 2.5L whole water or filtered water samples for PCB congeners by EPA 1668A.	40		
6	Analysis of 2.5L whole water or filtered water samples for dioxins & furans by EPA 1613B.	20		
7	Analysis of 2.5L whole water or filtered water samples for target OC Pesticides by EPA 1699 or equivalent.	20		
8	Analysis of 2.5L whole water or filtered water samples for target PAH compounds by EPA 8270 C/D modified by EPA 1625.	25		
9	Analysis of Sediment for PCB congeners by EPA 1668A; dioxins & furans by EPA 1613B; OC Pesticides by EPA 1699 or equivalent; and target PAH compounds by EPA 8270 C/D modified by EPA 1625. Includes moisture determination.	25		
10	Tissue Homogenization	25		
11	Analysis of Tissue for PCB congeners by EPA 1668A; dioxins & furans by EPA 1613B; OC Pesticides by EPA 1699 or equivalent; and target PAH compounds by EPA 8270 C/D modified by EPA 1625. Includes moisture determination and gravimetric lipid content as per EPA 1613B.	30		

The price used in the financial evaluation will be the total aggregate cost of the Estimated Usages multiplied by the firm unit prices. Firm unit prices shall be constant for an assumed 3 year contract.

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DNREC will be responsible for paying all transportation charges for sample shipment to the contract laboratory. The laboratory will be responsible for freight costs for Carboys, bottles, coolers, and packaging materials to DNREC.

Pricing for analytical costs should include provision of required reports in the analytical unit costs. This includes Level IV data packages, DNREC EQUIS EDDs, and Excel-based reporting.

III. BASIS OF SELECTION

1. **General:** To be declared responsive, a bid must:

- a) Comply with all the requirements of the bid solicitation; and
- b) Meet all mandatory technical evaluation criteria; and
- c) Obtain the required minimum of 65 points overall for the technical evaluation criteria which are subject to point rating. The rating is performed on a scale of 100 points.

Bids not meeting (a) or (b) or (c) will be declared non-responsive.

2. **Best Value:** Among the responsive bids, a possible Contract award will be based on the bid that represents the BEST VALUE. BEST VALUE will be determined by a combination of technical points (75% weighting) and price (25% weighting). BEST VALUE is the bid with the highest Total Points calculated using the following equation:

$$\text{Total Points} = \left(\frac{TP_i}{TP_{\max}} \times 75 \right) + \left(\frac{P_{\min}}{P_i} \times 25 \right)$$

The terms in the above equation are defined as follows:

TP_i = Technical Points received by bidder i based on the Technical Evaluation Criteria;

P_i = Price offered by bidder i based on the Financial Evaluation;

TP_{\max} = Maximum Technical Points received among all responsive bidders; and

P_{\min} = Minimum price offered among all responsive bidders.

Using the above equation, the highest weighted technical points are 75 and the highest weighted price points are 25. The highest possible Total Points is 100.

The Bidder achieving the highest Total Points based upon the above equation and underlying technical evaluation criteria and price will be considered the BEST VALUE to DNREC and recommended for award.

Appendix D provides a hypothetical example of a BEST VALUE determination.

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**APPENDIX D
EXAMPLE OF BEST VALUE DETERMINATION**

The hypothetical example below assumes that three bids are received, each meeting the mandatory criteria/requirements and the minimum required technical score.

BEST VALUE weighting: 75 points Technical; 25 points Price. BEST VALUE is the bid with the highest Total Points where Total Points equals the sum of weighted Technical Points and weighted Price Points. Maximum possible Total Points equals 100 points.

	Bid #1	Bid #2	Bid #3
Technical Score	90.0*	82.5	72.5
Bid Price	\$60,000	\$54,000	\$48,000**
Weighted Technical Points	$\left(\frac{90}{90} \times 75\right) = 75$	$\left(\frac{82.5}{90} \times 75\right) = 68.8$	$\left(\frac{72.5}{90} \times 75\right) = 60.4$
Weighted Price Points	$\left(\frac{48}{60} \times 25\right) = 20$	$\left(\frac{48}{54} \times 25\right) = 22.2$	$\left(\frac{48}{48} \times 25\right) = 25$
Total Points	$75 + 20 = 95$	$68.8 + 22.2 = 91$	$60.4 + 25 = 85.4$

* Highest Technical Score

** Lowest price proposal

Contract would be awarded to Bid #1 based on the highest Total Points.

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STATE OF DELAWARE

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APPENDIX E
SAMPLE STATE OF DELAWARE PROFESSIONAL SERVICES AGREEMENT

PROFESSIONAL SERVICES AGREEMENT

This Agreement ("Agreement") is entered into as of "Effective Date" and will end on "End Date", by and between the State of Delaware, Department of Natural Resources and Environmental Control, Division of Watershed Stewardship, Watershed Assessment Section ("Delaware"), and XYZ Analytical Services, with offices at "Address".

WHEREAS, Delaware desires to obtain certain specialized services to test filters, resins, surface water, sediment, and biota samples collected from Delaware watersheds for the presence and concentration of various chemical contaminants; and

WHEREAS, XYZ desires to provide such services to Delaware on the terms set forth below;

WHEREAS, Delaware and XYZ represent and warrant that each party has full right, power and authority to enter into and perform under this Agreement;

FOR AND IN CONSIDERATION OF the premises and mutual agreements herein, Delaware and XYZ agree as follows:

1. Services.

1.1 XYZ shall perform for Delaware the services specified in Appendix 1 to this Agreement, attached hereto and made a part hereof.

1.2 Any conflict or inconsistency arising in conjunction with services rendered shall be resolved based upon provisions in this Agreement (including any appendices, amendments or modifications thereto).

1.3 Delaware may, at any time, by written order, make changes in the scope of this Agreement and in the services or work to be performed. No services for which additional compensation may be charged by XYZ shall be furnished without the written authorization of Delaware. When Delaware desires any addition or deletion to the deliverables or a change in the Services to be provided under this Agreement, it shall notify XYZ, who shall then submit to Delaware a "Change Order" for approval authorizing said change. The Change Order shall state whether the change shall cause an alteration in the price or the time required by XYZ for any aspect of its performance under this Agreement. Pricing of changes shall be consistent with those established within this Agreement.

1.4 XYZ will not be required to make changes to its scope of work that result in XYZ's costs exceeding the current unencumbered budgeted appropriations for the services. Any claim of either party for an adjustment under Section 1 of this Agreement shall be asserted in the manner specified in the writing that authorizes the adjustment.

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2. Payment for Services and Expenses.

2.1 The term of the initial contract shall be from Start Date through End Date.

2.2 Delaware will pay XYZ for the performance of services described in Appendix 1, Statement of Work. Payment shall be made based on satisfactory completion of analyte groups, by matrix and watershed.

2.3 Delaware's obligation to pay XYZ for the performance of services described in Appendix 1, Statement of Work will not exceed the fixed fee amount of \$XXX,000. It is expressly understood that the work defined in Appendix 1 to this Agreement must be completed by XYZ and it shall be XYZ's responsibility to ensure that hours and tasks are properly budgeted so that all services are completed for the agreed upon fixed fee. Delaware's total liability for all charges for services that may become due under this Agreement is limited to the total maximum expenditure(s) authorized in Delaware's purchase order(s) to XYZ.

2.4 XYZ shall submit invoices to Delaware in sufficient detail to support the services provided. Delaware agrees to pay those invoices within thirty (30) days of receipt. In the event Delaware disputes a portion of an invoice, Delaware agrees to pay the undisputed portion of the invoice within thirty (30) days of receipt and to provide XYZ a detailed statement of Delaware's position on the disputed portion of the invoice within thirty (30) days of receipt. Delaware's failure to pay any amount of an invoice that is not the subject of a good-faith dispute within thirty (30) days of receipt shall entitle XYZ to charge interest on the overdue portion at no more than 1.0% per month or 12% per annum. All payments will be sent to XYZ, address.

2.5 Unless provided otherwise in an Appendix, all expenses incurred in the performance of the services are to be paid by XYZ. If an Appendix specifically provides for expense reimbursement, XYZ shall be reimbursed only for reasonable expenses incurred by XYZ in the performance of the services, including, but not necessarily limited to, travel and lodging expenses, communications charges, and computer time and supplies.

2.6 Delaware is a sovereign entity, and shall not be liable for the payment of federal, state and local sales, use and excise taxes, including any interest and penalties from any related deficiency, which may become due and payable as a consequence of this Agreement.

2.7 Delaware shall subtract from any payment made to XYZ all damages, costs and expenses caused by XYZ's negligence, resulting from or arising out of errors or omissions in XYZ's work products, which have not been previously paid to XYZ.

2.8 Invoices shall be submitted to: Richard Greene, Delaware Department of Natural Resources and Environmental Control, Division of Watershed Stewardship, Watershed Assessment Section, 820 Silver Lake Blvd., Suite 220, Dover, DE 19904-2464.

3. Responsibilities of XYZ.

3.1 XYZ shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services furnished by XYZ, its subcontractors and its and their principals, officers, employees and agents under this Agreement. In performing the specified services, XYZ shall follow practices consistent with generally accepted professional and technical standards. XYZ shall be responsible for ensuring that all services, products and deliverables furnished pursuant to this Agreement comply with the standards promulgated by the Department of Technology and Information ("DTI") published at <http://dti.delaware.gov/>, and as modified from time to time by DTI during the term of this Agreement. If any service, product or deliverable furnished pursuant to this Agreement does not conform with DTI standards, XYZ shall, at its expense and option either (1) replace it with a conforming equivalent or (2) modify it to conform with DTI standards. XYZ shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by XYZ's failure to ensure compliance with DTI standards.

3.2 It shall be the duty of the XYZ to assure that all products of its effort are technically sound and in conformance with all pertinent Federal, State and Local statutes, codes, ordinances, resolutions and other regulations. XYZ will not produce a work product that violates or infringes on any copyright or patent rights. XYZ shall, without additional compensation, correct or revise any errors or omissions in its work products.

3.3 Permitted or required approval by Delaware of any products or services furnished by XYZ shall not in any way relieve XYZ of responsibility for the professional and technical accuracy and adequacy of its work. Delaware's review, approval, acceptance, or payment for any of XYZ's services herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and XYZ shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to Delaware caused by XYZ's performance or failure to perform under this Agreement.

3.4 XYZ shall appoint a Project Manager who will manage the performance of services. All of the services specified by this Agreement shall be performed by the Project Manager, or by XYZ's associates and employees under the personal direction of the Project Manager.

3.5 Designation of the project manager is subject to review and approval by Delaware. All analytical work conducted will be performed by qualified XYZ staff as per ISO 170125 and NELAP requirements, with demonstration of competence in assigned tasks. Work conducted will be supervised and reviewed as per internal XYZ quality assurance procedures, documented in the XYZ Quality Manual or other task specific Standard Operating Procedures. Should the staff need to be diverted off the project for what are now unforeseeable circumstances, XYZ will notify Delaware immediately and work out a transition plan that is acceptable to both parties, as well as agree to an acceptable replacement plan to fill or complete the work assigned to this project staff position. Replacement project management persons are subject to review and approval by Delaware. If XYZ fails to make a required replacement within 30 days, Delaware may terminate this Agreement for default. Upon receipt of written notice from Delaware that an employee of XYZ is unsuitable to Delaware for

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good cause, XYZ shall remove such employee from the performance of services and substitute in his/her place a suitable employee.

3.6 XYZ shall furnish to Delaware's designated representative copies of all correspondence to regulatory agencies for review prior to mailing such correspondence.

3.7 XYZ agrees that its officers and employees will cooperate with Delaware in the performance of services under this Agreement and will be available for consultation with Delaware at such reasonable times with advance notice as to not conflict with their other responsibilities.

3.8 XYZ has or will retain such employees as it may need to perform the services required by this Agreement. Such employees shall not be employed by Delaware or any other political subdivision of Delaware.

3.9 XYZ will not use Delaware's name, either express or implied, in any of its advertising or sales materials without Delaware's express written consent.

3.10 The rights and remedies of Delaware provided for in this Agreement are in addition to any other rights and remedies provided by law.

4. Time Schedule.

4.1 A project schedule is included in Appendix 1.

4.2 Any delay of services or change in sequence of tasks must be approved in writing by Delaware.

4.3 In the event that XYZ fails to complete the project or any phase thereof within the time specified in the Contract, or with such additional time as may be granted in writing by Delaware, or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this Agreement or any extensions thereof, Delaware shall suspend the payments scheduled as set forth in Appendix 1.

5. State Responsibilities.

5.1 In connection with XYZ's provision of the Services, Delaware shall perform those tasks and fulfill those responsibilities specified in Appendix 1.

5.2 Delaware agrees that its officers and employees will cooperate with XYZ in the performance of services under this Agreement and will be available for consultation with XYZ at such reasonable times with advance notice as to not conflict with their other responsibilities.

5.3 The services performed by XYZ under this Agreement shall be subject to review for compliance with the terms of this Agreement by Delaware's designated representatives. Delaware representatives may delegate any or all responsibilities under the Agreement to appropriate staff members, and shall

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so inform XYZ by written notice before the effective date of each such delegation.

5.4 The review comments of Delaware's designated representatives may be reported in writing as needed to XYZ. It is understood that Delaware's representatives' review comments do not relieve XYZ from the responsibility for the professional and technical accuracy of all work delivered under this Agreement.

5.5 Delaware shall, without charge, furnish to or make available for examination or use by XYZ as it may request, any data which Delaware has available, including as examples only and not as a limitation:

- a. Copies of reports, surveys, records, and other pertinent documents;
- b. Copies of previously prepared reports, job specifications, surveys, records, ordinances, codes, regulations, other document, and information related to the services specified by this Agreement.

XYZ shall return any original data provided by Delaware.

5.6 Delaware shall assist XYZ in obtaining data on documents from public officers or agencies and from private citizens and business firms whenever such material is necessary for the completion of the services specified by this Agreement.

5.7 XYZ will not be responsible for accuracy of information or data supplied by Delaware or other sources to the extent such information or data would be relied upon by a reasonably prudent contractor.

5.8 Delaware agrees not to use XYZ's name, either express or implied, in any of its advertising or sales materials. XYZ reserves the right to reuse the nonproprietary data and the analysis of industry-related information in its continuing analysis of the industries covered.

6. Work Product.

6.1 All materials, information, documents, and reports, whether finished, unfinished, or draft, developed, prepared, completed, or acquired by XYZ for Delaware relating to the services to be performed hereunder shall become the property of Delaware and shall be delivered to Delaware's designated representative upon completion or termination of this Agreement, whichever comes first. XYZ shall not be liable for damages, claims, and losses arising out of any reuse of any work products on any other project conducted by Delaware. Delaware shall have the right to reproduce all documentation supplied pursuant to this Agreement.

6.2 XYZ retains all title and interest to the data it furnished and/or generated pursuant to this Agreement. Retention of such title and interest does not conflict with Delaware's rights to the materials, information and documents developed in performing the project. Upon final payment, Delaware shall have a perpetual, nontransferable, non-exclusive paid-up right and license to use, copy,

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modify and prepare derivative works of all materials in which XYZ retains title, whether individually by XYZ or jointly with Delaware. Any and all source code developed in connection with the services provided will be provided to Delaware, and the aforementioned right and license shall apply to source code. The parties will cooperate with each other and execute such other documents as may be reasonably deemed necessary to achieve the objectives of this Section.

6.3 In no event shall XYZ be precluded from developing for itself, or for others, materials that are competitive with the Deliverables, irrespective of their similarity to the Deliverables. In addition, XYZ shall be free to use its general knowledge, skills and experience, and any ideas, concepts, know-how, and techniques within the scope of its consulting practice that are used in the course of providing the services.

6.4 Notwithstanding anything to the contrary contained herein or in any attachment hereto, any and all intellectual property or other proprietary data owned by XYZ prior to the effective date of this Agreement ("Preexisting Information") shall remain the exclusive property of XYZ even if such Preexisting Information is embedded or otherwise incorporated into materials or products first produced as a result of this Agreement or used to develop such materials or products. Delaware's rights under this section shall not apply to any Preexisting Information or any component thereof regardless of form or media.

7. Confidential Information.

To the extent permissible under 29 *Del. C.* § 10001, et seq., the parties to this Agreement shall preserve in strict confidence any information, reports or documents obtained, assembled or prepared in connection with the performance of this Agreement.

8. Warranty.

8.1 XYZ warrants that its services will be performed in a good and workmanlike manner. XYZ agrees to re-perform any work not in compliance with this warranty brought to its attention within a reasonable time after that work is performed.

8.2 Third-party products within the scope of this Agreement are warranted solely under the terms and conditions of the licenses or other agreements by which such products are governed. With respect to all third-party products and services purchased by XYZ for Delaware in connection with the provision of the Services, XYZ shall pass through or assign to Delaware the rights XYZ obtains from the manufacturers and/or vendors of such products and services (including warranty and indemnification rights), all to the extent that such rights are assignable.

9. Indemnification; Limitation of Liability.

9.1 XYZ shall indemnify and hold harmless the State, its agents and employees, from any and all liability, suits, actions or claims, together with all reasonable costs and expenses (including attorneys' fees) directly arising out of (A) the negligence or other wrongful conduct of the XYZ, its agents or

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employees, or (B) XYZ's breach of any material provision of this Agreement not cured after due notice and opportunity to cure, provided as to (A) or (B) that (i) XYZ shall have been notified promptly in writing by Delaware of any notice of such claim; and (ii) XYZ shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise.

9.2 If Delaware promptly notifies XYZ in writing of a third party claim against Delaware that any Deliverable infringes a copyright or a trade secret of any third party, XYZ will defend such claim at its expense and will pay any costs or damages that may be finally awarded against Delaware. XYZ will not indemnify Delaware, however, if the claim of infringement is caused by (1) Delaware's misuse or modification of the Deliverable; (2) Delaware's failure to use corrections or enhancements made available by XYZ; (3) Delaware's use of the Deliverable in combination with any product or information not owned or developed by XYZ; (4) Delaware's distribution, marketing or use for the benefit of third parties of the Deliverable or (5) information, direction, specification or materials provided by Client or any third party. If any Deliverable is, or in XYZ's opinion is likely to be, held to be infringing, XYZ shall at its expense and option either (a) procure the right for Delaware to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing. The foregoing remedies constitute Delaware's sole and exclusive remedies and XYZ's entire liability with respect to infringement.

9.3 Delaware agrees that XYZ' total liability to Delaware for any and all damages whatsoever arising out of or in any way related to this Agreement from any cause, including but not limited to contract liability or XYZ negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to XYZ.

10. Employees.

10.1 XYZ has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by XYZ in the performance of the services hereunder; provided, however, that it will, subject to scheduling and staffing considerations, attempt to honor Delaware's request for specific individuals.

10.2 Except as the other party expressly authorizes in writing in advance, neither party shall solicit, offer work to, employ, or contract with, whether as a partner, employee or independent contractor, directly or indirectly, any of the other party's Personnel during their participation in the services or during the twelve (12) months thereafter. For purposes of this Section 10.2, "Personnel" includes any individual or company a party employs as a partner, employee or independent contractor and with which a party comes into direct contact in the course of the services.

11. Independent Contractor.

11.1 It is understood that in the performance of the services herein provided for, XYZ shall be, and is, an independent contractor, and is not an agent or employee of Delaware and shall furnish such services in its own manner and method except as required by this Agreement. XYZ shall be solely responsible for, and shall indemnify, defend and save Delaware harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other

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wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever.

11.2 XYZ acknowledges that XYZ and any subcontractors, agents or employees employed by XYZ shall not, under any circumstances, be considered employees of Delaware, and that they shall not be entitled to any of the benefits or rights afforded employees of Delaware, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefits. Delaware will not provide or pay for any liability or medical insurance, retirement contributions or any other benefits for or on behalf of Delaware or any of its officers, employees or other agents.

11.3 XYZ shall be responsible for providing liability insurance for its personnel.

11.4 As an independent contractor, XYZ has no authority to bind or commit Delaware. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

12. Suspension.

12.1 Delaware may suspend performance by XYZ under this Agreement for such period of time as Delaware, at its sole discretion, may prescribe by providing written notice to XYZ at least 30 working days prior to the date on which Delaware wishes to suspend. Upon such suspension, Delaware shall pay XYZ its compensation, based on the percentage of the project completed and earned until the effective date of suspension, less all previous payments. XYZ shall not perform further work under this Agreement after the effective date of suspension. XYZ shall not perform further work under this Agreement after the effective date of suspension until receipt of written notice from Delaware to resume performance.

12.2 In the event Delaware suspends performance by XYZ for any cause other than the error or omission of the XYZ, for an aggregate period in excess of 30 days, XYZ shall be entitled to an equitable adjustment of the compensation payable to XYZ under this Agreement to reimburse XYZ for additional costs occasioned as a result of such suspension of performance by Delaware based on appropriated funds and approval by Delaware.

13. Termination.

13.1 This Agreement may be terminated in whole or in part by either party in the event of substantial failure of the other party to fulfill its obligations under this Agreement through no fault of the terminating party; but only after the other party is given:

- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with the terminating party prior to termination.

13.2 This Agreement may be terminated in whole or in part by Delaware for its convenience, but only after XYZ is given:

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- a. Not less than 30 calendar days written notice of intent to terminate; and
- b. An opportunity for consultation with Delaware prior to termination.

13.3 If termination for default is effected by Delaware, Delaware will pay XYZ that portion of the compensation which has been earned as of the effective date of termination but:

- a. No amount shall be allowed for anticipated profit on performed or unperformed services or other work, and
- b. Any payment due to XYZ at the time of termination may be adjusted to the extent of any additional costs occasioned to Delaware by reason of XYZ's default.
- c. Upon termination for default, Delaware may take over the work and prosecute the same to completion by agreement with another party or otherwise. In the event XYZ shall cease conducting business, Delaware shall have the right to make an unsolicited offer of employment to any employees of XYZ assigned to the performance of the Agreement, notwithstanding the provisions of Section 10.2.

13.4 If after termination for failure of XYZ to fulfill contractual obligations it is determined that XYZ has not so failed, the termination shall be deemed to have been effected for the convenience of Delaware.

13.5 The rights and remedies of Delaware and XYZ provided in this section are in addition to any other rights and remedies provided by law or under this Agreement.

13.6 Gratuities.

13.6.1 Delaware may, by written notice to XYZ, terminate this Agreement if it is found after notice and hearing by Delaware that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by XYZ or any agent or representative of XYZ to any officer or employee of Delaware with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this Agreement.

13.6.2 In the event this Agreement is terminated as provided in 13.6.1 hereof, Delaware shall be entitled to pursue the same remedies against XYZ it could pursue in the event of a breach of this Agreement by XYZ.

13.6.3 The rights and remedies of Delaware provided in Section 13.6 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

14. Severability.

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid,

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illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

15. Assignment; Subcontracts.

15.1 Any attempt by XYZ to assign or otherwise transfer any interest in this Agreement without the prior written consent of Delaware shall be void. Such consent shall not be unreasonably withheld.

15.2 Services specified by this Agreement shall not be subcontracted by XYZ, without prior written approval of Delaware.

15.3 Approval by Delaware of XYZ's request to subcontract or acceptance of or payment for subcontracted work by Delaware shall not in any way relieve XYZ of responsibility for the professional and technical accuracy and adequacy of the work. All subcontractors shall adhere to all applicable provisions of this Agreement.

15.4 XYZ shall be and remain liable for all damages to Delaware caused by negligent performance or non-performance of work under this Agreement by XYZ, its subcontractor or its sub-subcontractor.

15.5 The compensation due shall not be affected by Delaware's approval of the XYZ's request to subcontract.

16. Force Majeure.

Neither party shall be liable for any delays or failures in performance due to circumstances beyond its reasonable control.

17. Non-Appropriation of Funds.

17.1 Validity and enforcement of this Agreement is subject to appropriations by the General Assembly of the specific funds necessary for contract performance. Should such funds not be so appropriated Delaware may immediately terminate this Agreement, and absent such action this Agreement shall be terminated as to any obligation of the State requiring the expenditure of money for which no specific appropriation is available, at the end of the last fiscal year for which no appropriation is available or upon the exhaustion of funds.

17.2 Notwithstanding any other provisions of this Agreement, this Agreement shall terminate and Delaware's obligations under it shall be extinguished at the end of the fiscal year in which Delaware fails to appropriate monies for the ensuing fiscal year sufficient for the payment of all amounts which will then become due.

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18. State of Delaware Business License.

XYZ and all subcontractors represent that they are properly licensed and authorized to transact business in the State of Delaware as provided in 30 *Del. C.* § 2301.

19. Complete Agreement.

19.1 This agreement and its Appendix shall constitute the entire agreement between Delaware and XYZ with respect to the subject matter of this Agreement and shall not be modified or changed without the express written consent of the parties. The provisions of this agreement supersede all prior oral and written quotations, communications, agreements and understandings of the parties with respect to the subject matter of this Agreement.

19.2 If the scope of any provision of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provision shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of the Agreement shall not thereby fail, but the scope of such provision shall be curtailed only to the extent necessary to conform to the law.

19.3 XYZ may not order any product requiring a purchase order prior to Delaware's issuance of such order. Each Appendix, except as its terms otherwise expressly provide, shall be a complete statement of its subject matter and shall supplement and modify the terms and conditions of this Agreement for the purposes of that engagement only. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

20. Miscellaneous Provisions.

20.1 In performance of this Agreement, XYZ shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. XYZ shall solely bear the costs of permits and other relevant costs required in the performance of this Agreement.

20.2 Neither this Agreement nor any appendix may be modified or amended except by the mutual written agreement of the parties. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the party against which it is sought to be enforced.

20.3 The delay or failure by either party to exercise or enforce any of its rights under this Agreement shall not constitute or be deemed a waiver of that party's right thereafter to enforce those rights, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

20.4 XYZ covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. XYZ further covenants, to its knowledge and ability, that in the performance of said services no person having any such interest shall be employed.

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20.5 XYZ acknowledges that Delaware has an obligation to ensure that public funds are not used to subsidize private discrimination. XYZ recognizes that if they refuse to hire or do business with an individual or company due to reasons of race, color, gender, ethnicity, disability, national origin, age, or any other protected status, Delaware may declare XYZ in breach of the Agreement, terminate the Agreement, and designate XYZ as non-responsible.

20.6 XYZ warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, or a percentage, brokerage or contingent fee. For breach or violation of this warranty, Delaware shall have the right to annul this contract without liability or at its discretion deduct from the contract price or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

20.7 This Agreement was drafted with the joint participation of both parties and shall be construed neither against nor in favor of either, but rather in accordance with the fair meaning thereof.

20.8 XYZ shall maintain all public records, as defined by 29 *Del. C.* § 502(7), relating to this Agreement and its deliverables for the time and in the manner specified by the Delaware Division of Archives, pursuant to the Delaware Public Records Law, 29 *Del. C.* Ch. 5. During the term of this Agreement, authorized representatives of Delaware may inspect or audit XYZ's performance and records pertaining to this Agreement at the XYZ business office during normal business hours.

21. Insurance.

21.1 XYZ shall maintain, at a minimum, the following insurance, or its equivalent, during the term of this Agreement:

- A. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law, **and**
- B. Comprehensive General Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
- C. Medical/Professional Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence; or
- D. Miscellaneous Errors and Omissions - \$1,000,000.00 per person/\$3,000,000 per occurrence, or
- E. Product Liability - \$1,000,000.00 per person/\$3,000,000 per occurrence, **and**
- F. If required to transport state employees, Automotive Liability Insurance covering all automotive units used in the work with limits of not less than \$100,000 each person and \$300,000 each accident as to bodily injury and \$25,000 as to property damage to others.

21.2. XYZ shall provide forty-five (45) days written notice of cancellation or material change of any

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policies.

- 21.3. Before any work is done pursuant to this Agreement, the Certificate of Insurance and/or copies of the insurance policies, referencing the contract number stated herein, shall be filed with the State. The certificate holder is as follows: XYZ Analytical, Ltd. Proof of insurance coverage is included as Attachment 2 to this contract.

22. Assignment of Antitrust Claims.

As consideration for the award and execution of this Agreement by the State, XYZ hereby grants, conveys, sells, assigns, and transfers to Delaware all of its right, title and interest in and to all known or unknown causes of action it presently has or may now or hereafter acquire under the antitrust laws of the United States and the State of Delaware, relating to the particular goods or services purchased or acquired by the State pursuant to this Agreement.

23. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, except where Federal Law has precedence. XYZ consents to jurisdiction venue in the State of Delaware.

24. Notices.

Any and all notices required by the provisions of this Agreement shall be in writing and shall be mailed, certified or registered mail, return receipt requested. All notices shall be sent to the following addresses:

TO DELAWARE: Richard Greene
Delaware Department of Natural Resources and
Environmental Control
Division of Watershed Stewardship
Watershed Assessment Section
820 Silver Lake Blvd., Suite 220
Dover, DE 19904-2464

TO XYZ: Name
XYZ Analytical Services
Address

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SIGNATURE PAGE TO FOLLOW

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IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

**STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

Witness

Name: _____

Title: _____

Date: _____

Date: _____

XYZ ANALYTICAL SERVICES

Witness

Name: _____

Title: _____

Date: _____

Date: _____